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No. 06-989

IN THE

Supreme Court of the United States

HALL STREET ASSOCIATES, L.L.C.,
Petitioner,

v.

MATTEL, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 12, 2007
CERTIORARI GRANTED MAY 29, 2007

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District Court Opinion and Order, dated April 29, 2002 (Appendix D) 39a

Amended Arbitrator's Findings of Fact and Conclusions of Law on Remand, dated September 3, 2002 (Appendix E) 59a

District Court Opinion and Order, dated May 1, 2003 (Appendix F) 86a

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District Court Opinion and Order, dated June 29, 2005 (Appendix I) 117a

District Court Judgment, signed June 29, 2005 (Appendix J) 129a

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UNITED STATES DISTRICT COURT

Case No. 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington limited liability company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; **TYCO INDUSTRIES, INC.**, a Delaware corporation; **TYCO MANUFACTURING CORP.**, an Oregon corporation, **TYCO TOYS, INC.**, a Delaware corporation; and **VIEW-MASTER IDEAL GROUP, INC.**, an Oregon corporation,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
3/10/2000	1	Complaint against Mattel Inc., Tyco Industries, Inc., Tyco Manufacturing Corp., Tyco Toys, Inc , View-Master Ideal Group, Inc. Filed by Hall Street Associates, L.L.C. (dls,) (Entered: 04/24/2000)
		Notice of Removal receipt #428902. Filed by Mattel Inc., Tyco Industries, Inc., Tyco Manufacturing Corp., Tyco Toys, Inc., View-Master Ideal Group, Inc. (dls,) (Entered: 04/24/2000)
03/17/2000	2	Demand For Jury Trial. Filed by Hall Street Associates, L.L.C.. (dls,) Modified on 4/24/2000 (dls,). (Entered: 04/24/2000)

DATE	NO.	PROCEEDINGS
3/29/2000	5	Answer to Complaint And Affirmative Defenses to Amended Complaint. (Related Doc #1) Filed by Mattel, Inc., Tyco Industries, Inc., Tyco Manufacturing Corp., Tyco Toys, Inc., View-Master Ideal Group, Inc. (dls,) (Entered: 04/24/2000)
06/30/2000	9	Second Amended Complaint For Injunctive Relief And Damages against Mattel Inc., Tyco Industries Inc., Tyco Manufacturing Corp., Tyco Toys, Inc., View-Master Ideal Group, Inc. (related document(s)1) Filed by Hall Street Associates, LL.C. (dls,) (Entered: 7/13/2000)
02/12/2001	28	ORDER ESTABLISHING TRIAL DATES AND PROCEDURES: Pretrial Order due by 3/27/2001. Court Trial set for 4/27/2001 at 09:00AM. (ccs,) (Entered: 02/12/2001)
04/20/2001	42	Record of Hearing. Order Denying Defendants Motion in Limine (Related Doc #30). The court will reserve ruling on admissible matters relating to Robert Hibbs at the time of trial. Signed 4/20/01 by Judge Robert E. Jones. Court Reporter: D. Apodaca. (tomg.) (Entered: 04/25/2001)
04/27/2001	51	Record of Proceedings before Judge Robert E. Jones: Court Trial Day One Court Reporter: K. Eismann (tomg,) (Entered: 05/24/2001)
5/21/2001	50	Findings of Fact and Conclusions of Law: by Judge Robert E. Jones. Signed 5/21/01) (ccs,) (Entered: 05/22/2001)

DATE	NO.	PROCEEDINGS
05/30/2001	53	Motion to Alter/Amend/Correct *Complaint.*, Motion for Reconsideration *(Oral Argument* [sic] *Reuested) (Expedited Hearing Requested).* Filed by Hall Street Associates, L.L.C.. (tomg,) (Entered: 05/30/2001)
06/13/2001	57	Transcript of Proceedings held on 4/27/01, Volume 1 before Judge Robert E. Jones. Court Reporter: Katherine Eismann (tomg,) (Entered: 06/13/2001)
06/26/2001	60	Order:Having reviewed plaintiff's motion and concluded that it raises no new issues, plaintiff's motion for reconsideration and to alter or amend complaint (# 53) is DENIED. The parties are ordered to seek mediation to attempt to resolve the remaining issues in this case.The oral argument set for June 28, 2001, is STRICKEN. by Judge Robert E. Jones. (ccs,) (Entered: 06/26//2001
10/16/2001	62	Order. Arbitrator to be selected by 11/1/01, and this matter concluded by 12/30/01. Signed 10/16/01 by Judge Robert E. Jones, (ccs,) (Entered: 10/17/2001)
10/16/2001	63	Joint Status Report. Filed by Mattel Inc., and Hall Street Associations; (ccs,) (Entered: 10/17/2001)
10/23/2001	64	Stipulation And Order Regarding Agreement To Arbitrate. Signed 10/23/01 by Judge Robert E. Jones. (tomg,) (Entered: 10/29/2001)

DATE	NO.	PROCEEDINGS
01/02/2002	65	Joint Status Report Regarding Arbitration And Request For Minor Revisions To Schedule. Filed by Mattel Inc. (tomg,) (Entered: 01/04/2002)
01/14/2002	66	Arbitrator's Findings of Fact And Conclusions Of Law (FILED UNDER SEAL). (tomg,) (Entered 01/16/2002)
02/01/2002	68	Attorneys' Fees and Costs: Arbitrators Findings of Fact And Conclusions Of Law. (FILED UNDER SEAL). (tomg,) (Entered: 02/02/2002)
02/04/2002	69	Affidavit of James M. Finn. Filed by Hall Street Associates, LL.C. (tomg,) (Entered: 02/11/2002)
02/13/2002	70	Motion for Order Vacating, Modifying And/Or Correcting Arbitration Award (Oral Argument Requested) (FILED UNDER SEAL). Filed by Hall Street Associates, L.L.C. (tomg,) (Entered: 02/13/2002)
02/13/2002	71	Memorandum in Support Of Plaintiffs Motion To Vacate, Modify And/Or Correct Arbitration Award (FILED UNDER SEAL). Filed by Hall Street Associates, LL.C. (Related document(s)70) (tomg) (Entered: 02/13/2002)
02/25/2002	72	Transcript of Proceedings (FILED UNDER SEAL) held on 12/11/2000 before Judge Robert E. Jones. Court Reporter Dennis R. Grube. (FILED UNDER SEAL) (tomg,) Modified on 2/27/2002 (tomg,). (Entered: 02/27/2002)

DATE	NO.	PROCEEDINGS
02/25/2002	73	Response to Motion (filed as Mattel, Inc's., Memorandum Of Points And Authorities (1) in Opposition To Plaintiffs Motion For An Order Vacating, Modifying And/Or Correcting Arbitration Findings Of Fact And Conclusions Of Law; And (2) In Support of Contingent Appeal (FILED UNDER SEAL). Filed by Mattel Inc. (Related motion(s)70 (tomg,) (Entered: 02/27/2002)
03/08/2002	77	Reply to Motion (filed as Plaintiff's Reply Memorandum In Support Of Motion For An Order Vacating, Modifying And/Or Correcting Arbitration Award) (FILED UNDER SEAL). Filed by Hall Street Associates, L.L.C. (Related motion(s)70) (tomg,) (Entered 03/08/2002)
03/11/2002	78	Memorandum (filed as Mattel, Inc.'s Supplemental Authority Regarding Footnote 4 Of Its Memorandum In Opposition To Plaintiff's Motion For An Order Vacating, Modifying And/Or Correcting Arbitration Findings Of Fact And Conclusions Of Law) (FILED UNDER SEAL). Filed by Mattel Inc. (Related document(s)73) (tomg,) (Entered 03/13/2002)
03/13/2002	79	Motion to Strike And Response To Mattel, Inc.'s Supplemental Authority (FILED UNDER SEAL). Filed by Hall Street Associates, LL.C. (tomg,) (Entered: 03/13/2002) 03/13/2002)
04/19/2002	80	Transcript of Proceedings held on 4/5/02 before Judge Robert E. Jones. Court Re-

DATE	NO.	PROCEEDINGS
		porter: Dennis W. Apodaca. (FILED UNDER SEAL) (tomg,) Modified on 4/25/2002 (tomg,). (Entered: 04/22/2002)
04/29/2002	82	ORDER: Opinion and Order (FILED UNDERSEAL): Plaintiffs Motion to Vacate is granted and this case is remanded to the arbitrator for further consideration in accordance with this opinion, (Related Doc #70. Plaintiffs Motion to Strike is denied as moot (Related Doc #79) Signed on 4/29/02 by Judge Robert E. Jones. (ccs,) Additional attachment(s) added on 5/2/2002 (tomg,). Modified on 5/2/2002 (tomg,). (Entered: 04/20/2002)
08/20/2002	83	Order granting Motion to Release Exhibits to Arbitrator Larry Coady for Use During Remand Proceedings. FILED UNDER SEAL Signed 8/20/02 by Judge Ancer L. Haggerty. (cmm) (Entered: 08/20/2002).
09/18/2002	84	Notice of Request for Review and Modification of Arbitration Decision of 9/3/02. FILED UNDER SEAL. Filed by Mattel Inc., Tyco Industries, Inc., Tyco Manufacturing Corp., Tyco Toys, Inc., View-Master Ideal Group, Inc. (cmm) (Entered: 09/19/2002)
09/19/2002	85	Precautionary Notice of Request for Review and Modification of Arbitration Decision of 9/3/02. Filed by Hall Street Associates, LLC. (cmm) (Entered: 09/19/2002)

DATE	NO.	PROCEEDINGS
11/21/2002	87	Final Arbitration Award FILED UNDER SEAL. Filed by Hall Street Associates, LL.C. (mja,) (Entered: 11/22/2002)
11/25/2002	88	Status Report regarding further proceedings in light of decisions by arbitrator on remand from district court. Filed under Seal. (md,) (Entered: 11/27/2002)
11/26/2002	89	Order Regarding Further Proceedings in Light of Decisions by Arbitrator on Remand from the District Court. FILED UNDER SEAL Signed 11/27/02 by Judge Robert E. Jones. (mja,) (Entered: 12/04/2002)
12/16/2002	90	Motion for an Order Modifying Arbitration Award and for, of Entry of Judgment on the Award as Modified [FILED UNDER SEAL] ORAL ARGUMENT REQUESTED. Filed by Hall Street Associates, LLC. (mja,) (Entered 12/17/2002)
12/16/2002	91	Memorandum in Support of Plaintiffs Motion to Modify Arbitration Award and for Entry Of Judgment FILED UNDER SEAL. Filed by Hall Street Associates, LLC. (Related document(s)90) (mja,) (Entered: 12/17/2002)
12/16/2002	92	Motion filed as: Defendant Mattel, Inc.'s Supplemental Notice and Motion for Review and Modification of Arbitration Decisions (FILED UNDER SEAL) REQUEST FOR ORAL ARGUMENT. Filed by Mattel Inc. (mja,) (Entered 12/17/2002)

DATE	NO.	PROCEEDINGS
12/16/2002	93	Memorandum of Points and Authorities in Support of Motion for Review of Modification of Arbitration Decisions FILED UNDER SEAL Filed by Mattel Inc.; (Related document(s)92) (mja,) (Entered: 12/17/2002)
12/16/2002	94	Appendix to Defendant Mattel, Inc.'s Opening Brief in Support of Its Motions to Review and Modify the Arbitration Decisions FILED UNDER SEAL. Filed by Mattel Inc. (Related document(s)92)(mja,) (Entered: 12/17/2002)
01/24/2003	99	Memorandum of Points and Authorities in Opposition to Plaintiffs Motion to Modify Arbitration Award and for Entry of Judgment FILED UNDER SEAL. Filed by Mattel Inc. (Related document(s)90) (mja,) (Entered: 01/28/2003)
01/27/2003	98	Response filed as: Plaintiffs Opposition to Defendant Mattel, Inc's Motion for Review and Modification of Arbitration Decisions FILED UNDER SEAL. Filed by Hall Street Associates, L.L.C. (Related document(s)92) (mja,) (Entered: 01/28/2003)
02/04/2003	100	Reply Memorandum in Support of Plaintiffs Motion to Modify Arbitration Award and for Entry of Judgment FILED UNDER SEAL. Filed by Hall Street Associates, L.L.C. (Related document(s)90) (mja,) (Entered: 02/04/2003)

DATE	NO.	PROCEEDINGS
02/04/2003	101	Reply Memorandum in Support of Motion for Review and Modification of Arbitration Decision FILED UNDER SEAL. Filed by Mattel Inc. (Related document(s)92) (mja,) (Entered: 02/05/2003)
03/05/2003	103	CIVIL MINUTES:—RECORD OF HEARING Oral argument held on motion [#90] for order modifying arbitration award and motion [#92] for review and modification of arbitration decisions. The court takes the motions under advisement. Court Reporter Amanda LeGore. Plaintiffs Counsel James M. Finn and Michael A. Cohen. Defendant's Counsel Peter Hsiao and Marc Blackman by Judge Robert E. Jones. (Related documents(s) 90, 92) (mja,) (Entered: 03/07/2003)
05/01/2003	104	OPINION AND ORDER: Order Denying Motion (Related Doc #90), Order Granting in part. Denying in part, Motion (Related Doc #92) Signed on 5/1/03 by Judge Robert E. Jones. (mja,) Additional attachment(s) added on 5/5/2003 (mja,) FILED UNDER SEAL. Modified on 5/5/2003 (mja,) (Entered: 05/01/2003)
05/02/2003	105	Judgment: FILED 'UNDER SEAL Signed 5/14/03 by Judge Robert E. Jones. (mja,) (Entered: 05/15/2003)
05/15/2003	106	Judgment: FILED UNDER SEAL Signed 5/14/03 by Judge Robert E. Jones. (mja,) (Entered: 05/15/2003)

DATE	NO.	PROCEEDINGS
06/12/2003	117	Notice of Appeal to USCA order #106 entered on 5/15/03 Filing fee collected. Receipt # 450943 issued. (CADS attached) Filed by Mattel Inc. Transcript due by 8/11/2003. (Related Document(s) 106) (Kirk,) (Entered: 06/13/2003)
06/13/2003	119	Notice of Appeal to USCA from order #50, 104, 106, 60 entered on 5/22/01, 6/26/01, 5/1/03, Filing fee collected. Receipt #450969 issued. Representation Statement and CADS submitted. Filed by plaintiff Hall Street Associates, L.L.C. (th,) (Entered; 06/18/2003)
06/24/2003	124	Order. Signed 6/24/03 by Judge Robert E. Jones. (FILED UNDER SEAL) (Kirk,) (Entered: 06/27/2003)
07/14/2003	133	ORDER: Opinion & Order: Granting Plaintiffs Motion for an Order & Judgment awarding supplemental attorneys' fees, costs & expenses (Related Doc #110). Hall Street is awarded attorneys fees of $47,930.75 & costs & expenses $2,610.62. Signed on 7/14/03 by Judge Robert E. Jones. (Kirk,) (Entered: 07/15/2003)
07/15/2003	130	Arbitration Trial Exhibits (Volume 1) Exhibits #101 thru 113. (FILED UNDER SEAL) (Entered: 7/15/2003)
07/15/2003	131	Arbitration Trial Exhibits (Volume 2 Exhibits 114-190. Filed by Mattel, Inc. (DOCUMENT FILED UNDER SEAL) (Entered: 7/15/2003)

DATE	NO.	PROCEEDINGS
07/15/2003	144	Additions to Trial Exhibit List. Filed by Hall Street Associates, L.L.C. (Kirk,) (DOCUMENT FILED UNDER SEAL) (Entered: 9/18/2003)
07/30/2003	135	Transcript of Arbitration Hearing held on 12/12/01 before Judge Larry T. Coady, Arbitrator. Court Reporter: Naegeli Reporting. (DOCUMENT FILED UNDER SEAL) (Kirk,) (Entered: 07/30/2003)
07/30/2003	136	Transcript of Arbitration Hearing held on 12/13/01 before Judge Larry T. Coady, Arbitrator. Court Reporter: Naegeli Reporting. (DOCUMENT FILED UNDER SEAL) (Kirk,) (Entered: 07/30/2003)
07/30/2003	137	Transcript of Arbitration Hearing held on 12/14/01 before Judge Larry T. Coady, Arbitrator. Court Reporter: Naegeli Reporting. (DOCUMENT FILED UNDER SEAL) (Kirk,) (Entered: 07/30/2003)
08/11/2003	138	Transcript of Proceedings held on 8/20/02 before Judge Larry T. Coady, Arbitrator. Court Reporter: Julie Bennett. (DOCUMENT FILED UNDER SEAL) (Kirk,) (Entered: 08/11/2003)
08/18/2003	139	Transcript of Proceedings held on 9/27/02 before Judge Hearing in front of Arbitrator Larry Coady. Court Reporter: Barbara Shafer. (DOCUMENT FILED UNDER SEAL) (Kirk,) (Entered: 08/21/2003)
08/18/2003	140	Mattel Inc.'s Arbitration Trial Exhibits; Volume I. Exhibits 1-28 (from the Civ.199-

DATE	NO.	PROCEEDINGS
		1815-JO case.) (FILED UNDER SEAL) (Kirk,) (Entered: 08/21/2003)
08/18/2003	141	Notebook Marked Plaintiffs Exhibits; Exhibits 101-149 (FILED UNDER SEAL) (Kirk,) (Entered: 08/21/2003)
09/17/2003	142	Transcript of Proceedings held on 10/27/00 before Judge Robert E. Jones. Court Reporter: Dennis Apodaca. (fh,) (Entered: 09/18/2003)
08/18/2003	145	Plaintiffs Exhibit List. Filed by Hall Street Associates, L.L.C. from the Civil case 99-1815J0. (Volume 2)(Documents #29 70) DOCUMENT FILED UNDER SEAL (Kirk,) (Entered: 09/18/2003)
01/18/2005	147	MANDATE of USCA for the 9th Circuit re Notice of Appeal CA 03-35526 119 and Notice of Appeal CA 03-35525 117: The decision of the District Cour is AFFIRMED in part, REVERSED in part, REMANDED. (Related Document(s): Notice of Appeal, 119, Notice of Appeal 117) (tomg.) (Entered: 02/08/2005)
03/25/2005	150	Objections to Confirmation of Original Arbitration Award on Remand. ORAL ARGUMENT REQUESTED. Filed by Hall Street Associates, L.L.C. (dmd,) (Entered: (3128/2005).
04/11/2005	151	**CIVIL MINUTES: Record of** Order: Objections 150 to confirmation of original arbitration award are under advisement as of 5/13/05. Ordered by Judge Robert E. Jones, 4/11/05. (dmd,) (Entered: 04/13/2005)

DATE	NO.	PROCEEDINGS
06/30/2005	155	Opinion and Order (See 13-page Opinion and Order for details). Signed on 6/29/05 by Judge Robert E. Jones. (dmd,) (Entered: 06/30/2005)
06/30/2005	156	JUDGMENT. Signed on 6/29/05 by Judge Robert E. Jones (dmd,) (Entered: 06/30/2005)
07/07/2005	157	Notice of Appeal to USCA 9th Circuit from Judgment 156 entered 6/30/05. Filing fee in amount of $255.00 collected; Receipt No.4316 issued. Filed by Mattel Inc. (Related Document(s): Judgment 156) (tomg,) (Entered: 07/13/2005)
07/25/2005	164	Declaration of Peter Hsiao and Exhibits Submitted in Opposition to Plaintiff's Motion for Order and Judgment Awarding Supplemental Attorneys' Fees, Costs, and Expenses. Filed by Mattel Inc.. (Related document(s): Motion for attorney fees 159.)(dmd,) (Entered: 07/26/2005)
08/19/2005	169	Order—Plaintiffs Motion for Order and Judgment Awarding Supplemental Attorney Fees, Costs and Expenses 159 is GRANTED in PART and DENIED in PART. Signed on 8/18/2005 by Judge Robert E. Jones. (mja,) (Entered: 08/26/2005)
08/19/2005	170	Judgment. Signed on 8/18/05 by Judge Robert E. Jones. (mja,) Entered: 08/26/2005)

DATE	NO.	PROCEEDINGS
08/31/2005	171	Notice of Appeal to USCA 9th Circuit from Judgment 170. Filing fee in amount of $255.00 collected; Receipt No.5243 issued. Filed by Mattel Inc. (See Administrative correction of the Record at document #173). (Related Document(s: Judgment 170) (ecp,) (Entered 09/01/2005)
08/25/2006	175	JUDGMENT of USCA for the 9th Circuit re Notice of Appeal #05-35906 171, and Notice of Appeal #05-35721 157. The decision of the District Court is REVERSED and REMANDED. (Related Document(s): Notice of Appeal, 171, Notice of Appeal 157) (ljl) (Entered: 08/30/2006)
01/03/2007	177	MANDATE of USCA for the 9th Circuit re Notice of Appeal, 171, Notice of Appeal 157. (Related Document(s): Notice of Appeal, 171, Notice of Appeal 157) (ntm) (Entered: 01/05/2007)
02/26/2007	189	Opinion & Order. Signed on 2/26/07 by Judge Robert E. Jones. (ntm) (Entered 02/27/2007)
02/26/2007	190	Judgment. Signed on 2/26/07 by Judge Robert E. Jones. (ntm) (Entered:02/27/2007)
03/23/2007	192	Notice of Appeal to USCA 9th Circuit from Opinion 189 and Judgment 190 entered 2/27/07. Filing fee in amount of $455.00 collected; Receipt No. 14636 issued. Filed by Hall Street Associates, L.L.C.. (Related Document(s): Opinion, Order 189, Judgment 190) (tomg) (Entered: 03/26/2007)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-35525
D.C. No. CV-00-00355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited liability company,
Plaintiff- Appellee,

v.

MATTEL INC., a Delaware corporation,
Defendant - Appellant,

and,

TYCO INDUSTRIES, INC, a Delaware corporation; et al.,
Defendants.

No. 03-35526
D.C. No. CV-00-00355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited liability company,
Plaintiff - Appellant,

v.

MATTEL INC., a Delaware corporation,
Defendant - Appellee,

and,

TYCO INDUSTRIES, INC, a Delaware corporation; et al.,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
10/6/03	Filed original and 15 copies Mattel Inc.'s first brief on cross-appeal, (Informal: n) of 24 pages and 5 excerpts of record in 2 vols; served on 10/3/03 [03-35525, 03-35526] (gar) [03-35525 03-35526]
12/19/03	Filed original and 15 copies Hall Street Assoc.'s second brief on cross-appeal (Informal: n) of 74 pages and 5 excerpts of record in I vol; served on 12/18/03. Brief is oversized (see order of 12/15/03) [03-35525, 03-35526] (gar) [03-35525 03-35526]
1/26/04	Filed original and 16 copies Mattel Inc.'s third brief on cross-appeal (Informal: n) of 23 pages and 5 copies suppl excerpts of record in 1 vol; served on 1/23/04 [0335525, 03-35526] (gar) [03-35525 03-35526]
2/20/04	Filed original and 15 copies Hall Street Assoc. reply brief, (Informal: n) of 10 pages and 5 suppl excerpts in 1 vol; served on 2/19/04 [03-35525, 03-35526] (gar) [03-35525 03-355261
11/3/04	ARGUED AND SUBMITTED TO Stephen S. TROTT, Andrew J. KLEINFELD, Louis H. Pollak [03-35525 0335526] (ms)
11/16/04	FILED MEMORANDUM DISPOSITION: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Unsigned, Unpublished. All parties shall bear their own costs on appeal. Stephen S. TROTT, Andrew J. KLEINFELD, Louis H. Pollak) FILED AND ENTERED JUDGMENT. [03-35525, 03-35526] (gar) [03-35525 03-35526]

DATE	PROCEEDINGS
12/7/04	[5257295] Filed original and 50 copies Plaintiff Hall Street Assoc.'s petition for panel rehearing and petition for rehearing en bane 14 p.pages, served on 12/6/04 PANEL AND ALL ACTIVE JUDGES AND ANY INTERESTED SENIOR JUDGES [03-35525, 03-35526] (gar) [03-35525 03-35526]
1/4/05	Filed order (Stephen S. TROTT, Andrew J. KLEINFELD, Louis H. Pollak,): denying petition for enbanc rehearing [5257295-1] [03-35525, 03-35526] (gar) [03-35525 03-35526]
1/12/05	MANDATE ISSUED [03-35525, 03-35526 (gar) [0335525 03-35526]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 05-35721
D.C. No. CV-00-00355-REJ

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited liability company,
Plaintiff - Appellee,

v.

MATTEL INC., a Delaware corporation,
Defendant - Appellant,

and

TYCO INDUSTRIES, INC, a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

No. 05-35906
D.C. No. CV-00-00355-REJ

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited liability company,
Plaintiff - Appellee,

v.

MATTEL INC., a Delaware corporation,
Defendant - Appellant,

and

TYCO INDUSTRIES, INC, a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
12/19/05	Filed original and 15 copies Appellant Mattel Inc. opening brief (Informal: no) 21 pages and five excerpts of record in 2 volumes; served on 12/16/05. [05-35721, 05-35906] (bb) [05-35721 05-3 5906]
2/21/06	Filed original and 15 copies appellee Hall Street Assoc's. 30 page brief, 1 suppl eor vol; served on 2/17/06 [0535721, 05-35906] (bb) [05-35721 05-35906]
3/14/06	Filed original and 15 copies Mattel Inc. in 05-35721, Mattel Inc. in 05-35906 reply brief, (Informal: no) 12 pages; served on 3/13/06 [05-35721, 05-35906] (bb) [0535721 05-35906]
7/25/06	ARGUED AND SUBMITTED TO Alfred T. GOODWIN, Stephen R. REINHARDT, Susan P. GRABER [05-35721, 05-359061 (ms) [05-35721 05-35906]
8/1/06	FILED. MEMORANDUM DISPOSITION: REVERSED REMANDED (Terminated on the Merits after Oral Hearing; Reversed; Written, Unsigned, Unpublished. Alfred T. GOODWIN, Stephen R. REINHARDT, Susan P. GRABER) FILED AND ENTERED JUDGMENT. [05-35721, 05-35906] (crw) [05-35721 05-35906]
9/20/06	[5952118] Filed original and 50 copies Appellee Hall Street Assoc.'s petition for panel rehearing and petition for rehearing en banc 13 p.pages, served on 9/19/06 (PANEL, ALL ACTIVE JUDGES AND INTERESTED JUDGES) (bb) [05-35721 05-35906]

DATE	PROCEEDINGS
10/17/06	Filed order (Alfred T. GOODWIN, Stephen R. REINHARDT, Susan P. GRABER,): The petition for rehearing en banc is DENIED. [5952118-1] [05-35721, 05-35906] (bb) [05-35721 05-35906]
10/23/06	Filed Aplc Hall Street Assoc.'s motion to stay the mandate. served on 10/20/06 (PANEL) [5985887] (bb) [05-35721 05-35906]
10/27/06	Filed order (Alfred T. GOODWIN, Stephen R. REINHARDT, Susan P. GRABER,): granting appellee's motion to stay the mandate pending petition for writ of certiorari. [5985887-1] [05-35721] (bb) [05-35721]
11/6/06	Filed Aplt Mattel's mtn to recall order granting mtn for stay of mandate & opposition to mtn [05-35721, 05-35906] served on 11/3/06 (PANEL) [05-35721, 05-35906] (mhf) [05-35721 05-35906]
11/30/06	Filed order (Alfred T. GOODWIN, Stephen R. REINHARDT, Susan P. GRABER,): Mattel, Inc.'s motion to vacate the stay of mandate is DENIED on the condition that Hall Street Associates post a supersedeas bond within 14 days of the date of this order, in the amount of $400,000.00. [5998339-1] If the bond is timely posted, the stay of mandate will be in place for the period set forth in FRAP 41(d)(2)(B). If the bond is not posted within 14 days, the clerk shall issue the mandate forthwith. (phone, faxed & filed at 4:07 p.m.) [05-35721, 05-35906] (bb) [05-35721 05-35906]

DATE	PROCEEDINGS
12/21/06	MANDATE ISSUED [05-35721, 05-35906] (bb) [0535721 05-35906]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

[Filed JUN 30, 2000]

Civil No. 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington limited liability company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; TYCO INDUSTRIES, INC., a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation, TYCO TOYS, INC., a Delaware corporation; and VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF AND DAMAGES

PARTIES AND JURISDICTION

1.

Plaintiff Hall Street Associates L.L.C. ("Hall Street Associates") is a Washington limited liability company. Hall Street Associates has paid all fees, obtained all licenses, and performed all acts that are prerequisites to this action.

2.

Defendant Mattel, Inc. ("Mattel, Inc.") is a Delaware corporation doing business in Oregon.

3.

Defendant Tyco Industries, Inc. ("Tyco Industries") is a Delaware corporation which has apparently merged into Mattel, Inc.

4.

Defendant Tyco Manufacturing Corp. ("Tyco Manufacturing") is an Oregon corporation which has apparently merged with a Delaware corporation that subsequently merged into Mattel, Inc.

5.

Defendant Tyco Toys, Inc. ("Tyco Toys") is a Delaware corporation which has apparently merged into Mattel, Inc.

6.

Defendant View-Master Ideal Group, Inc. ("View-Master") is an Oregon corporation which has apparently merged with a Delaware corporation that subsequently merged into Mattel, Inc.

7.

Hall Street Associates is the owner of certain property in Washington County, Oregon commonly known as 8585 S.W. Hall Boulevard, Beaverton, Oregon (the "Premises"). The Premises is legally described in Exhibit 1.

8.

The acts described herein occurred in Washington County, Oregon, or relate to real property located in Washington County, Oregon.

BACKGROUND FACTS

9.

On March 5, 1991, View-Master entered into a Lease Agreement (the "Lease") with Cascade Square Associates,

under which View-Master agreed to lease the Premises from Cascade Square Associates. A true copy of the Lease, maintained in the ordinary course of business, is attached as Exhibit 2, and is incorporated herein by reference. Hall Street Associates is the successor-in-interest to Cascade Square Associates.

10.

The Lease was amended by a First Amendment to Lease Agreement between Cascade Square Associates and View-Master dated April 29, 1996. A true copy of this First Amendment, maintained in the ordinary course of business, is attached as Exhibit 3 (the "First Amendment"), and is incorporated herein by reference.

11.

View-Master, as part of a corporate merger, assigned its interest under the 1991 Lease Agreement, as amended, to Tyco Manufacturing. Tyco Manufacturing agreed to be bound by the 1991 Lease Agreement and the First Amendment.

12.

Tyco Toys, the parent company of Tyco Manufacturing, is a guarantor under the 1991 Lease Agreement. The Guaranty of Performance in the First Amendment states that "The obligation of the Guarantor is a primary and unconditional obligation and shall be enforceable either before or after proceeding against [the Tenant]."

13.

On or about September 5, 1996, Tyco Manufacturing assigned its interest in the 1991 Lease Agreement to Tyco Industries. In the Assignment of Lease, Tyco Manufacturing agreed that it would not be released or relieved from any liability under the Lease. Tyco Toys remained a guarantor under the Lease.

14.

In 1997, Tyco Toys was merged into Mattel, Inc. The surviving entity is Mattel, Inc. Tyco Manufacturing is now a subsidiary of Mattel, Inc.

15.

Paragraph 5(b) of the Lease provides as follows:

> **"Tenant shall comply at its expense with all applicable laws, rules and regulations of any public authority**, including but not limited to those **regarding maintenance, operation, and use of the Premises**, use of machinery and signs on the Premises, **and those regarding discharging hazardous materials of any kind or other waste**." (Emphasis added.)

16.

Paragraph 5(c) of the Lease provides as follows:

> Tenant shall not conduct or permit any activities on the Premises that create a nuisance or damage the reputation of the Premises . . .

17.

Paragraph 8(a) of the Lease provides as follows:

> **"Tenant will, at its sole cost and expense, maintain the Premises and make repairs to the Premises**, including without limitation the heating, ventilating. air conditioning, mechanical, electrical, elevator, and plumbing systems, insulation and fireproofing and prevention systems, structural roof, walls, and foundations, the fixtures and appurtenances to the Premises, other improvements, sidewalks and parking areas as and when required or requested by any governmental agency or **when needed to preserve them in good repair, operating condition, working order and good appearances**, and regardless of whether the repairs are ordinary or

extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, or contractors. **All such repairs will be in quality and class equal to the original work or installations.**" (Emphasis added).

18.

Paragraph 8(b) of the Lease provides as follows:

"Tenant shall not alter the Premises . . . without Landlord's prior written consent which consent shall not be unreasonably withheld. All alterations shall be made in a good and workmanlike manner. . . ."

19.

The term "Premises" is defined at Paragraph 1(a) of the Lease to include:

"The real property legally described on Exhibit A (the "Land") and several buildings, parking and access areas, a water tower, and other improvements which are currently used as a manufacturing, warehouse and office facility (collectively the "Building") commonly known as 8585 S.W. Hall Boulevard, Beaverton, Oregon, and outlined on the drawing attached as Exhibit B."

20.

Paragraph 12(a) of the Lease provides as follows:

"**Tenant shall comply with all federal, state, and local environmental laws and regulations in its use of the Premises**, including but not limited to the Resource Conservation and Recovery Act, as amended (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA). . . . Tenant shall also assume all responsibility for, and costs associated with, any closure and/or post-closure care required under any permit obtained by Tenant or other-

wise for treatment, storage, or disposal of hazardous wastes." (Emphasis added.)

21.

Paragraph 12(b) of the Lease provides as follows:

"**Tenant shall use its best efforts and safety practices to prevent the release by Tenant, its agents or employees of hazardous substances as herein defined on the Premises**. Tenant shall immediately notify Landlord in writing of any release of hazardous waste. In addition, **Tenant assumes liability for the use or presence** in the Building materials or **on or about the Premises of any hazardous waste** including but not limited to asbestos or lead. **Tenant assumes all responsibility for the investigation and cleanup of any such release or presence or use of hazardous Building materials** and shall indemnify and defend Landlord, its officers, agents, and employees, against and from any and all losses, costs, damages, expenses (including environmental abatement costs or liabilities directly or indirectly resulting or arising from any such release or presence or use of hazardous building materials." (Emphasis added.)

22.

Paragraph 12(d) of the Lease provides as follows:

"Hazardous waste, hazardous building materials or hazardous substances for the purposes of this Lease shall be defined to include, but shall not be limited to, the following:

(a) Asbestos or any asbestos containing material.

(b) Any substance defined as "hazardous substance," "hazardous material," or "toxic substance" in

(1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended;

(2) the Hazardous Materials Transportation Act, as amended;

(3) the Resource Conservation and Recovery Act, as amended; and

(4) any similar federal, state or local law or regulation now or hereafter in effect.

(c) Polychlorinated Biphenyl's (PCB's).

(d) Flammable or combustible materials.

(e) Radioactive materials.

(f) Infectious wastes."

23.

Defendants have altered or removed certain portions of the structures and fixtures on the Premises without the authorization of Hall Street Associates or its predecessor, in violation of the Lease, including piping and a sump servicing the playdough area in building 900 on the Premises. There are instances in which Hall Street Associates specifically denied permission to alter or remove portions of the structures and fixtures on the Premises, which Defendant Mattel, Inc. summarily ignored.

24.

Hall Street Associates has a property right that entitles Hall Street Associates to use of a specific quantity of the groundwater from the Premises. This right to use groundwater is registered with the State of Oregon.

25.

Defendants failed to maintain or rebuild structures on the Premises, resulting in waste and physical damage to those structures, in violation of the Lease.

26.

Defendants failed to insure the Premises to replacement value, in violation of the Lease. Defendants failed to maintain liability insurance naming hall Street Associates as an additional insured, in violation of the Lease.

27.

Defendants allowed the groundwater production well on the Premises, the water tower on the Premises, the soils, structures, and shallow and deep groundwater resources to become contaminated with a number of pollutants and toxic and hazardous substances, including but not limited to TCE, PCBs, petroleum pollutants, and lead and other metals, in violation of the Lease.

28.

Defendants allowed the soils and shallow and deep groundwater under the Premises to become contaminated with pollutants, including toxic and hazardous substances, in violation of the terms of the Lease. As a direct consequence of this contamination, Hall Street Associates has suffered the loss of its right to withdraw and utilize groundwater.

29.

The Department of Environmental Quality of the State of Oregon ("DEQ") issued an Order on Consent in matter number WMCSR-NWR-98-17 on November 9, 1998 ("Consent Order"). The Consent Order named Defendant Mattel, Inc. as a responsible party. Defendant Mattel, Inc. signed the Consent Order, admitting liability for contamination of the Premises by hazardous and toxic materials, and agreeing to take steps to remediate the environmental damage to the Premises.

30.

Pursuant to the Consent Order, Defendants are required to maintain equipment and perform services on the Premises, for

the purpose of remediating environmental violations, for a period of time exceeding that stated in the Lease.

31.

In order to maintain the equipment and perform the services on the Premises required by the State of Oregon, Defendants must become a holdover tenant, upon the expiration of the Lease.

32.

Defendants and Hall Street Associates have been sued by third parties who claim to have been injured by toxic or hazardous materials that Defendants imported through the production well or otherwise allowed to accumulate on the Premises.

33.

Defendants refused to accept tender of or indemnify Hall Street Associates against lawsuits brought by third parties relating to toxic or hazardous materials that Defendants imported onto and allowed to accumulate on the Premises, in violation of the Lease. * * *

34.

Defendants failed to reimburse Hall Street Associates for costs incurred by Hall Street Associates, which are currently in excess of $300,000, relating to Defendants' violation of environmental laws and regulations.

35.

On May 31, 2000, defendant Mattel, Inc. served a notice on Hall Street Associates purporting to terminate the term of the Lease, effective as of May 31, 2001.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

36.

There is an actual existing controversy between the parties as to the respective rights and obligations of the parties under the Lease. Pursuant to ORS 28.010 *et seq.*, Hall Street Associates is entitled to a declaration that the Lease is a valid enforceable contract, and is binding on the Defendants.

37.

Pursuant to ORS 28.010 *et seq.*, Hall Street Associates is entitled to a declaration that Defendants have an obligation under the Lease to repair and maintain the Premises, so that the Premises are placed in a condition that is equal in quality and class to the original work and installations.

38.

There is an actual existing controversy between the parties to this lawsuit as to whether the Lease requires Defendants to defend and indemnify Hall Street Associates from actions by third parties, relating to the actions of Defendants described herein.

39.

Pursuant to ORS 28.010 *et seq.*, Hall Street Associates is entitled to a declaration that the Lease requires Defendants to indemnify and defend Hall Street Associates from all actions and liability relating to the actions of Defendants and the condition of the Premises described herein, including claims of third parties.

40.

There is an actual existing controversy between the parties to this lawsuit as to whether the Lease requires Defendants to remove or remediate all hazardous or toxic substances on the Premises.

41.

Pursuant to ORS 28.010 *et seq.*, Hall Street Associates is entitled to a declaration that the Lease requires Defendants to remove or remediate all hazardous or toxic substances on the Premises.

42.

There is an actual existing controversy between the parties to this lawsuit as to whether Defendants will remain as a holdover tenant, by locating, installing and maintaining the equipment and performing present and future services on the Premises as may be necessary to fulfill Defendants' obligations to the State of Oregon relating to ongoing environmental remediation and related remedial activities.

43.

Pursuant to ORS 28.010 *et seq.*, Hall Street Associates is entitled to a declaration that Defendants will remain as a holdover tenant, by locating, installing and maintaining the equipment and performing present and future services on the Premises as may be necessary to fulfill the obligations to the State of Oregon relating to ongoing environmental remediation and related remedial activities.

44.

There is an actual existing controversy between the parties to this lawsuit as to the propriety of defendants' purported termination of the Lease, to be effective May 31, 2001.

45.

Pursuant to ORS 28.010 *et seq.*, Hall Street Associates is entitled to a declaration that defendants' purported early termination of the Lease is invalid, ineffective, and contrary to the terms of the Lease.

SECOND CLAIM FOR RELIEF

(Injunction)

46.

Defendants have breached the Lease by failing to maintain the Premises, by allowing waste and damage to the Premises, and by allowing the Premises to become contaminated with hazardous and toxic substances.

47.

Hall Street Associates is entitled to temporary and permanent injunctive relief, requiring Defendants to restore the Premises to its original condition.

THIRD CLAIM FOR RELIEF

(Breach Of Lease)

48.

Defendants failed to maintain and repair the Premises as required under paragraph 8(a) of the Lease, which constitutes a material breach of the Lease. Defendants' failure to maintain and repair includes, without limitation, failure to repair and maintain the heating, ventilating, air conditioning, mechanical, electrical elevator and plumbing systems, insulation and fire proofing and prevention systems, roof, walls, foundations, and other improvements.

49.

On or about May 27, 1997, Hall Street Associates sent Defendants a Notice of Default, notifying the Defendants that they had "failed to repair and maintain the Premises." * * *

50.

Defendants materially breached the Lease by failing to comply with public laws, rules and regulations, including, but not limited to, laws and regulations governing storage and/or release of discharges of hazardous or toxic substances into the

environment and laws and regulations governing water systems, and by releasing hazardous substances onto the Premises in violation of the law.

51.

Defendants materially breached the Lease by altering the Premises without the Landlord's consent.

52.

Defendants materially breached the Lease by conducting activities that caused a nuisance and damaged the reputation of the Premises.

53.

Defendants materially breached the Lease by storing or discharging hazardous substances without notifying the Landlord.

54.

Defendants materially breached the Lease by failing to reimburse Hall Street Associates for expenses it incurred related to the release or presence of hazardous substances on the Premises. Defendants must pay late fees and interest on these expenses pursuant to Paragraph 4 of the Lease, because these expenses are "other sums payable by Tenant to Landlord under this Lease" for the purpose of Paragraph 4.

55.

Defendants materially breached the Lease by failing to accept tender of and indemnify Hall Street Associates from lawsuits brought by third parties, relating to the contamination of the Premises with hazardous and toxic materials by Defendants. * * *

56.

Defendants materially breached the Lease by failing to insure the Premises up to its replacement value. Defendants

materially breached the Lease by failing to provide liability insurance naming Hall Street Associates as an additional insured.

57.

Pursuant to the Lease, Hall Street Associates allowed Defendants to use a valuable water right that is registered with the State of Oregon. Defendants materially breached the Lease by causing substantial damage to this water right and rendering this right unusable.

58.

The breaches of the Lease described above have caused substantial damages to Hall Street Associates, in an amount to be determined at trial, but which are currently estimated as follows:

$7.5 million for damage to and loss of right to withdraw water under Hall Street Associates' water right;

$6.3 million for damage to and necessary repairs of the structures and improvements on the Premises;

$300,000 for unreimbursed expenses incurred by Hall Street Associates in connection with the release or presence of hazardous substances on the Premises; and

$5.5 million for reduction in value on the Premises based on environmental contamination caused or permitted by Defendants and Defendants' failure to repair and maintain the Premises, including without limitation loss of property reputation and property stigmatization.

WHEREFORE, Plaintiff Hall Street Associates requests the following relief:

(a) A Declaration that the Lease is a valid enforceable contract, and is binding on the Defendants.

(b) A Declaration that Defendants have an obligation to repair and maintain the Premises as necessary to

place the Premises in the condition equal in quality and class to its original condition.

(c) A Declaration that the Lease requires Defendants to defend and indemnify Hall Street Associates from all actions by any third parties, relating to the condition of the Premises and the actions of Defendants described herein.

(d) A Declaration that the Lease requires Defendants to remove or remediate all hazardous or toxic substances on, under or about the Premises.

(e) A Declaration that Defendants will remain as a holdover tenant, by locating, installing, maintaining the equipment and performing present and future services and testing on the Premises necessary to fulfill present and future obligations to the State of Oregon relating to environmental remediation and related remedial activities.

(f) A Declaration that Defendants' purported early termination of the Lease is invalid, ineffective, and contrary to the terms of the Lease;

(g) An injunction requiring Defendants to maintain and repair the Premises to the quality and class of its original installation.

(h) Judgment in favor of Hall Street Associates, and against Defendants, jointly and severally, for damages in an amount to be proven at trial.

(i) Judgment in favor of Hall Street Associates, and against Defendants, jointly and severally, for all late fees, delinquency penalties, and similar amounts and costs due under the Lease, and for interest in the amount of 1.5 percent per month for all amounts due under the Lease.

(j) Judgment in favor of Hall Street Associates, and against Defendants, jointly and severally, for plaintiff's reasonable attorneys' fees and costs as provided in the Lease.

(k) Prejudgment interest on all damages at the highest legal rate.

(l) Judgment for such other relief as justice and equity require.

DATED this 30th day of June, 2000.

TONKON TORP LLP

By /s/ Edwin C. Perry
EDWIN C. PERRY
OSB No. 84322
Telephone: 503/802-2026

SHORT CRESSMAN & BURGESS, P.L.L.C.
Richard A. Du Bey
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Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CV 00-355 JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington limited liability company,
Plaintiff,

vs.

MATTEL, INC., a Delaware corporation,
Defendant.

April 27, 2001
Portland, Oregon
Volume I

APPEARANCES

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* * * *

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE ROBERT E. JONES
UNITED STATES DISTRICT COURT JUDGE

[59] relationship between Cascade Square Associates and Hall Street Associates. In 1998, as I understand, Cascade Square Associates formed Hall Street Associates, correct?

A. Correct.

Q. And Hall Street Associates has all of the assets of Cascade Square Associates, correct?

A. Correct.

Q. And, in fact, the only asset is this Beaverton property, correct?

A. Well, there's cash and other items. But, basically, that's correct.

Q. So, you have these two corporate structures. You have Hall Street Associates, owned wholly by Cascade Square Associates. The purpose for forming Hall Street Associates was to assist in providing protection for the partners of Cascade Square against potential liability, right?

A. Well, your statement that we had these two corporate structures, one of them is a corporation. One of them is partnership. Actually, one of them is a limited liability company. One of them is a partnership.

Hall Street Associates was formed in an effort to shield Cascade Square Associates from any potential liability. That's correct.

Q. And the protection from liability would be for claims asserted arising from the operations on the Beaverton

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington limited liability company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; *et al.*,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JONES, *Judge*:

Plaintiff Hall Street Associates ("Hall Street") brings this action against defendants Mattel, Inc. ("Mattel") and its predecessors, seeking an order from this court that Mattel is required to meet its contractual obligations through April 30, 2003. The case was tried to the court on April 27, 2001 and April 30, 2001. Having considered the testimony, documentary evidence, and the arguments of counsel, judgment will be entered for Mattel based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff Hall Street Associates, L.L.C. is the owner of certain property in Washington County, Oregon, located at 8585 S.W. Hall Boulevard, Beaverton, Oregon (the "Premises"). Hall Street's predecessor in interest is Cascade Square Associates.

2. Defendant Mattel is a Delaware corporation doing business in Oregon. Its predecessors in interest are defendant View-Master Ideal Group ("View-Master"), Tyco Industries, Inc. ("Tyco Industries"), Tyco Manufacturing Corporation ("Tyco Manufacturing") and Tyco Toys, Inc. ("Tyco Toys").

3. On March 5, 1991, View-Master entered into a Lease Agreement (the "Lease") with Cascade Square Associates, pursuant to which Cascade Square Associates agreed to lease the premises to View-Master.

4. The Lease provided that View-Master would lease the premises for commercial purposes for a term of approximately six years.

5. Pursuant to the second paragraph of section 3 of the Lease, the tenant was permitted to terminate its tenancy with one year's notice. Notwithstanding the right to terminate its tenancy, however, the tenant's obligation to "perform its other obligations under the Lease" continued "through May 31, 1997."

6. On April 29, 1996, Cascade Square Associates and View-Master executed an amended lease (the "Amended Lease").

7. Through a series of mergers and assignments among the defendants, Mattel became the tenant in 1997.

8. The Amended Lease specifically amended the Lease in four respects:

a. Paragraph 1.c. of the Lease was amended, such that the "Lease Expiration Date," identified in the Lease as May 31, 1997, was changed to April 30, 2003.

b. Paragraph 1.d. was amended to modify Mattel's rental amount, and to specify rental amounts owed through April 30, 2003.

c. Section 10 of the Lease, entitled "Lien for Rent, was deleted and replaced with a provision entitled "Landlord's Lien." The new provision modified and clarified Hall Street's right to a security interest and lien on property held by Mattel on the Premises in the event that Mattel failed to meet its rent obligations.

d. Paragraph 34, entitled "Completion of Certain Obligations Prior to Termination," was added. Paragraph 34 provided that Mattel was obligated to complete any and all obligations under paragraphs eight (8) and twelve (12) "not later than nine (9) months prior to the Lease Expiration Date."

9. The Amended Lease provided that "other than as amended as set forth, [the Lease] shall continue to be in full force and effect, and all of the terms and conditions in it shall remain effective and enforceable by and between the parties relative to the Premises.

10. Negotiating the Amended Lease were Robert Hibbs for the Landlord and Dennis Wesolowski and Daniel B. Nottage for the Tenant.

11. The Amended Lease was drafted by Hall Street, and specifically, by Robert Hibbs, an attorney and partner of Cascade Square Associates.

12. While the Amended Lease was being negotiated, Michael Kennedy was senior vice-president, secretary and general counsel of Tyco Toys. Mr. Kennedy reviewed a draft of the Amended Lease and concluded that it permitted Tyco Toys to terminate the Amended Lease each year on May 31, provided that one year's notice had been given. Mr. Kennedy conveyed his understanding of that provision to his immediate superior, the chief financial officer of Tyco Toys.

CONCLUSIONS OF LAW

Hall Street seeks enforcement of the Amended Lease through May 31, 2003, on a single legal basis.[1] In its post-trial submission to the court, Hall Street explains that "Plaintiff has presented its case as one in which the court has determined that there is an ambiguity and extrinsic evidence is being presented by both parties to explain the ambiguity. The court may declare the intent of the parties, based on such evidence, and the meaning of the 1996 Amendment as it impacts Section 3 of the 1991 Lease, without resorting to reformation theory."

In this case, the parties concede that the Amended Lease is a completely integrated agreement. "The parol evidence rule, in brief, provides that a binding, completely integrated, written agreement supersedes or discharges all agreements, written or oral, that were made before the completely integrated agreement, to the extent that the prior agreements are within the scope of the completely integrated agreement. Abercrombie v. Hayden Corp., 320 Or. 279, 286, 883 P.2d 845, 850 (1994). Therefore, "if the writing is a complete integration, parol evidence of prior agreements within the scope of the complete integration is inadmissible, whether or not that evidence is consistent with the complete integration." Abercrombie, 320 Or. at 288 (citing Hatley v. Stafford, 284 Or. 523, 535, 588 P.2d 603 (1978)).

Notwithstanding the prohibition of parol evidence in such cases, a factfinder may look to extrinsic evidence to explain the meaning of an ambiguous provision. Abercrombie, 320 Or. at 292 (citing Libby Creek Logging, Inc. v. Johnson, 225 Or. 336, 339, 358 P.2d 491 (1960)). Relying on this exception, Hall Street has presented extrinsic evidence relating to

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[1] Hall Street consistently has refused to advance a "mistake" theory or to seek reformation of the Amended Lease. While I might have been amenable to such a claim, I will not entertain an argument that simply is not before me.

the parties' understanding of the Amended Lease. According to Hall Street, while the Amended Lease states that Mattel is required to meet its rental and other obligations only through May 31, 1997, the parties understood that Mattel was actually obligated through 2003. Essentially, they ask me to negate the May 31, 1997 contained in paragraph 2 of Section 3 of the Amended Lease, and replace it with the date of April 30, 2003. This I cannot do.

While extrinsic evidence is admissible to explain an ambiguity in an agreement, such evidence may not be used to negate an express term of a bargained for, fully integrated agreement. Oregon courts have consistently held that where prior or contemporaneous negotiations or agreements are inconsistent with a term of the written agreement, evidence thereof is inadmissible to negate those inconsistent written terms. See, e.g., Varner v. Eves, 164 Or. App. 66, 990 P.2d 357 (Or. Ct. App. 1999); State of Oregon v. Triad Mechanical, Inc., 144 Or.App. 106, 114 925 P.2d 918, 923 (Or. Ct. App. 1996).

Furthermore, in this case, there is evidence that Mattel relied on the Amended Lease in the form that it was actually drafted. Michael Kennedy, who was general counsel and senior vice-president of Tyco Toys at the time the Amended Lease was negotiated and signed, testified at trial that he understood the date of May 31, 1997 to permit Tyco Toys to terminate the Amended Lease prior to the lease expiration date, providing one year's notice had been given. He also testified that he informed his client of his understanding of the Amended Lease. "If the parties . . . have assented to the writing as the embodiment of their entire agreement, each should be able to rely on the terms of the writing as conclusive evidence of what they have agreed to. Hatley v. Stafford, 284 Or. 523, 531, 588 P.2d 603, 607 (1978).

The cases cited by Hall Street do not warrant the contrary conclusion. In Abercrombie, while the court did state that an

ambiguous provision could be explained by extrinsic evidence, it also noted that "a completely integrated writing may not be contradicted or supplemented by prior terms." 320 Or. at 288. In Moon v. Moon, 140 Or. App. 402, 914 P.2d 1133 (1996), a husband and wife negotiated a divorce settlement, pursuant to which the husband was awarded a particular piece of property specifically identified by its address. There was evidence that both parties assumed that the award included the adjacent property, which was not specifically identified anywhere in the settlement. The court concluded that where the agreement awarded the property "located at" the particular location, it included the adjacent land not specifically identified. Thus, unlike here, there was no express term that had to be negated or ignored in order for the court to reach its conclusion.

In this case, I am faced with a lease that was negotiated over a substantial period of time by highly experienced attorneys. Robert Hibbs, who was primarily responsible for negotiating and drafting both the Lease and the Amended Lease on behalf of Hall Street, had 22 years of legal experience. These are sophisticated parties who had the means and the expertise to negotiate a complete agreement, and to expect that they could rely on it. Based on the language of the Amended Lease, and the evidence before me, I will not now upset the agreement that they themselves have executed.

CONCLUSION

Based on the foregoing, the court concludes that Mattel's notice of termination was valid, and that its obligations to pay rent and other obligations under the Amended Lease cease as of May 31, 2001.

DATED this 21st day of May, 2001.

/s/ ROBERT E. JONES
Robert E. Jones
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

[Filed OCT 16, 2001]

Case No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; **TYCO INDUSTRIES, INC.**, a Delaware corporation; **TYCO MANUFACTURING CORP.**, an Oregon corporation; **TYCO TOYS, INC.**, a Delaware corporation; and **VIEW-MASTER IDEAL GROUP, INC.**, an Oregon corporation,
Defendants.

JOINT STATUS REPORT

The parties to this action submit this joint status report regarding this action.

Pursuant to the Court's Order dated June 26, 2001, the parties met on August 15, 2001 to attempt to mediate their dispute before Mediator Edward J. Brunet. The parties were unable to settle the case at this mediation session. At the suggestion of the mediator, however, the parties agreed to seek to reach an agreement by which all remaining issues in the case could be resolved through "contract arbitration"[1] that would require the arbitrator to prepare written findings of fact and conclusions of law and allow for judicial review of the arbitrator's legal rulings, including conclusions of law. The

[1] *See* E. Brunet, "Replacing Folklore Arbitration with a Contract Model of Arbitration," 74 *Tulane Law Review* 39, 65-76 (1999).

agreement will also provide that there will be no further discovery except for an exchange of expert witness' reports and disclosures under the rules provided by the Federal Rules of Civil Procedure.

The parties have prepared and exchanged versions of a draft agreement to arbitrate, to be submitted and approved by the Court, and a draft set of arbitration rules. The parties will submit their agreement to the Court for its approval shortly.

Dated: October 15, 2001.

MARC D. BLACKMAN
RANSOM BLACKMAN LLP
PETER HSIAO
SIEGMUND SHYU
MORRISON & FOERSTER, LLP

By: /s/ Marc D. Blackman
MARC D. BLACKMAN, ESQ.
Attorneys for Defendant
Mattel, Inc.

Dated: October 15, 2001.

JAMES M. FINN
DEBRA MALDONADO
SCHWABE, WILLIAMSON & WYATT

By: /s/ James M. Finn
JAMES M. FINN, ESQ.
Attorneys for Plaintiff
Hall Street Associates, L.L.C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

[Filed JAN 2, 2002]

Case No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; TYCO INDUSTRIES, INC., a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; and VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,

Defendants.

JOINT STATUS REPORT REGARDING ARBITRATION AND REQUEST FOR MINOR REVISIONS TO SCHEDULE

The parties jointly submit this report to the Court to inform it regarding the status of this action.

1. Pursuant to the Court's Order dated October 16, 2001, the parties attended arbitration proceedings on December 12-14, 2001 before Arbitrator Larry T. Coady to resolve the remaining issues in the case. The arbitration hearing record is complete and the matter is under advisement before the Arbitrator.

2. The October 16 Order specified that the arbitration be concluded by December 30, 2001. This is a Sunday. The parties therefore request a one-day extension to December 31, 2001 for the Arbitrator to issue his findings of fact and conclusions of law order.

3. In addition to the substantive issues, the Arbitration Agreement provides for the Arbitrator to designate the prevailing party and award that party its attorneys' fees, costs, and expenses as provided under Section 24 of the Lease. During the arbitration hearing, the parties and the Arbitrator agreed that it would be most efficient to defer the fee issue until after the Arbitrator rendered his findings and conclusions on the parties' substantive claims. The parties therefore request that the Court approve the following schedule for awarding attorneys' fees, costs, and expenses:

January 7, 2002:	Prevailing party submits its fee application.
January 14, 2002:	Opposing party submits its objections.
January 21, 2002:	Prevailing party submits its response.
January 28, 2002:	Arbitrator renders his attorneys' fees award.

Dated: December 27, 2001.

MARC D. BLACKMAN
RANSOM BLACKMAN LLP

PETER HSIAO
SIEGMUND SHYU
MORRISON & FOERSTER, LLP

By: /s/ Marc D. Blackman
MARC D. BLACKMAN, ESQ.
Attorneys for Defendant Mattel, Inc.

Dated: December 27, 2001.

JAMES M. FINN
MICHAEL A. COHEN
DEBRA MALDONADO
SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ James M. Finn
JAMES M. FINN, ESQ.
Attorneys for Plaintiff Hall Street
Associates, L.L.C

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON DISTRICT

[Filed FEB 4, 2002]

Case No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; **TYCO INDUSTRIES, INC.**, a Delaware corporation; **TYCO MANUFACTURING CORP.**, a Delaware corporation; and **VIEW-MASTER IDEAL GROUP, INC.**, an Oregon corporation,
Defendants.

AFFIDAVIT OF JAMES M. FINN

STATE OF OREGON)
) ss.
County of Multnomah)

I, James M. Firm, being first being duly sworn on oath do depose and say as follows:

1. I am one of the attorneys for plaintiff Hall Street Associates, LLC herein. I make this affidavit from personal knowledge and in regard to Hall Street's response to Mattel's request to enter judgment, without review by the court, on a portion of the arbitrator's decision in this matter.

2. The parties participated in a court ordered mediation in regard to this matter, in August, 2001. The parties failed to settle the case, but did agree to a form of arbitration of the remaining issues in the case. The parties eventually nego-

tiated a stipulation regarding their agreement to arbitration, which was submitted to the court on October 22, 2001.

3. The parties specifically negotiated a schedule for the arbitration, including a hearing date on December 12, 2001 and a date by which the arbitrator's decision in the matter would be rendered, December 30, 2001. At the time of the agreement, and until late December, the parties understood that there would only be one decision by the arbitrator, encompassing all issues before him, including an award of reasonable attorney fees to the prevailing party.

4. One of the primary features of this arbitration agreement was that, unlike ordinary binding arbitration, the arbitration decision would be reviewable by Judge Jones, and then entered as a judgment of the Federal District Court, which would then be reviewable by the 9th Circuit Court of Appeals. The judgment entered by this court would include both the arbitrator's decision and the court's previous decision on the issues in the case which were not arbitrated.

5. The arbitration hearing was not concluded until late in the day on Friday, December 14. Thereafter, it became apparent that it would be unlikely that the arbitrator could decide the substantive issues, as well as decide who the prevailing party was and award reasonable attorney fees and costs to that party, by the December 30 deadline. Therefore, the parties agreed to extend the schedule for the completion of the arbitrator's decision from the end of December to the end of January, 2001, by allowing the arbitrator to complete his decision in two parts. The first part, the decision on the substantive issues, would be due on December 31 (not December 30, which was a Sunday). The parties then set up a briefing schedule for presentation of the attorney fees issue, so that the decision would be made on the attorney fees by January 28 and a final arbitration award could be entered at that time.

6. At no time in my discussion with the attorneys for Mattel regarding extending the deadline for the completion of the arbitrator's decision did the attorneys for Mattel state that they believed that the effect of the extension would be that any party wishing to review the arbitrator's decision would have to request such review in two stages. In fact, the attorneys for Mattel proposed the language for the joint status report and did not seek to amend paragraph 3 of the Arbitration Agreement stipulation, to provide for two requests for review of each part of the arbitrator's decision. This left in place the parties' understanding, reflected in the original stipulation, that the request for review to this court would not occur until the arbitrator's decision on all issues before him was complete.

7. Mr. Blackman's January 4, 2002 letter to the court forwarding Mr. Coady's findings of fact and conclusions of law is consistent with my understanding that there was one issue remaining to be decided by the arbitrator, that is the award of attorney fees, before the arbitrator's decision would be complete.

/s/ James M. Finn
JAMES M. FINN

SUBSCRIBED AND SWORN to before me this 4th day of February, 2002.

/s/ Beth Gibney
BETH GIBNEY
NOTARY PUBLIC FOR OREGON
My Commission Expires: 5/31/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

00-0355-JO

HALL STREET ASSOCIATES, L.L.C.,
Plaintiff,

vs.

MATTEL, INC., *et al.*,
Defendant.

April 5, 2002
Portland, Oregon

APPEARANCES

FOR THE PLAINTIFF: James Finn
Michael Cohen
Attorneys at Law

FOR THE DEFENDANT: Marc Blackman
Peter Hsiao
Attorneys at Law

COURT REPORTER: Dennis W. Apodaca, RPR
1000 S.W. Third Ave., Room 301
Portland, OR 97204
(503) 326-8182

* * * *

Proceedings recorded stenographically,
computer-aided transcription.

[22] I could, in a variety of different ways. One way to put it to the Court is this: Had View-Master tested the water and discovered the TCE at the earliest possible time that they were on the property, it would not have made any difference in the amount of damage that was done on the site. The TCE was already there, it was already released and none of the activities of View-Master changed the configuration, the location, the damage that was done to the property.

THE COURT: What about the use?

MR. HSIAO: That's a fair question. The use is the only thing that would have changed. Remember, the finding of fact of the arbitrator is that none of the use of the TCE of the water on the property made the TCE problem any worse. It didn't spread the TCE, and it didn't exacerbate the problems.

THE COURT: Let's take common sense. Here, I am on the property, and I'm drinking water. It is contaminated with TCE. The contamination is the same, but my use of this is going to hurt me, allegedly, if it could be proved, all through this process.

MR. HSIAO: Yes: If I could talk about that.

THE COURT Up to the date that they quit using it for drinking water.

MR. HSIAO: So what I would like to do here is address the Court's question, first, by putting it in [23] context. What you have done, the Court has separated one type of injury. That is the ingestion of the water from most of the injury which was at issue at the arbitration, which was property damage at the property.

So the water right, the TCE that was in the shallow groundwater or the deep groundwater, in the soil, the remediation of that, all of that would have existed whether the water was tested or not. So in context, the Court's question is appropriate.

How about somebody who drank the water? Why shouldn't the operator indemnify for that? The answer is fact specific to the claims that were made in the arbitration. If the Court will look at that factual record, the claims for indemnity were brought by three workers, three workers who sued only Hall Street and not Mattel for their exposure. What they sued Hall Street for—was they sued Hall Street for Hall Street's negligence in providing contaminated water.

Now, remember Hall Street also has a water testing requirement as the owner of the site. The allegations that were made nowhere mention Mattel. Certainly those workers are free to pursue or file claims against Mattel. There is a whole system of insurance set up in order to deal with those claims.

So for the three claims that the Court points out, [24] personal injury, those three claims were directed only at Hall Street. I think a theme that will run through this discussion, the competing arguments to the Court, one argument is to read sections of the lease in isolation. Our argument is: We have to read the lease together. If we read the lease together, the indemnity provision of the lease has a second provision. The second provision provides that nothing in the lease requires the tenant to indemnify the owner for its own negligence.

The only claim that is made in those three lawsuits is the owner's own negligence. That's why they are not indemnified for the TCE portion.

So If you read the lease together, none of the injury that's claimed by Hall Street, there is no "but for" causation that

you can insert the tenant into for lack of testing the water except for the example the Court pointed out, your ingestion of the water.

On that fact-specific claim, that allegation was the allegation of the negligence of the landlord, which the lease specifically excludes from the indemnity, as you would expect.

In the context, not just of the lease, there is no statute, there is no case, and specifically there is no citation any place in the transcript or anywhere else in the record where Hall Street can point to evidence that was [25] presented at the arbitration that applicable environmental law meant a law that has nothing to do with the existence of the contamination.

Mattel didn't use and View-Master and Tyco didn't use the TCE. But most particularly the theory of the arbitration was that Mattel, Tyco or View-Master spread the TCE. Everyone concedes it was used by those companies. Everyone concedes the problem preexisted for 20 years before View-Master ever got on the site. Everyone concedes that the water was already contaminated; that the soil was already contaminated; that the problem, to the extent it existed, existed without any effect of testing for the water.

The only exception is the one the Court pointed out, which is if you would have found the problem sooner, wouldn't you have been the "but for" causation. And the fact that the Court focuses on causation as to what is an applicable environmental law is exactly the point. That's the core of the case. It is the one point that is not raised anywhere, in the Hall Street opening brief.

Applicability requires this thought of causation. As I told the Court from the initial part, the findings of fact not challenged by Hall Street, is that none of the use, none of the damage was exacerbated or made any worse by the operations of the tenant.

* * * *

[38] obvious use of that term. "The tenant shall comply at its expense with all applicable laws regarding maintenance, operation and use of the premises." That's what applicable means.

12A of the lease required them to comply with all laws having to do with the use of the—excuse me—all environmental laws having to do with the use of the premises. One of those environmental laws is testing requirements. The failure to test led directly to the failure to discover this contamination.

So I think the legal error committed by the arbitrator is absolutely clear; that his conclusion that, A, this was not an environmental law that they violated is just dead wrong; and B, it is an applicable environmental law because it is applicable to their use of the property. It would have prevented—it would have discovered this TCE contamination as much as 16 years before it was discovered and they are, therefore, not entitled to this exception.

THE COURT: Is there any evidence that the failure to comply with applicable environmental laws caused any additional property damage?

MR. FINN: Well, there was evidence to that effect. We offered a great deal about that. The arbiter found it was insufficient to reach that conclusion.

THE COURT: Irrespective of any environmental [39] applicable laws, there was no additional property damage.

MR. FINN: That's what he found.

THE COURT: You are bound by that?

MR. FINN: We are.

THE COURT: You are.

MR. FINN: But again, that's only part of the analysis.

THE COURT: You are. But your only remedy then would be for this Court, No. 1, to declare that the water laws, Clean Drinking Water laws are an environmental law.

MR. FINN: That's right.

THE COURT: And had they been adhered to, then what? Then remand and determine whether you suffered any damages as a result of that?

MR. FINN: Well, no. The remand would be since they were in violation of applicable environmental laws, they do not get the benefit of the exception to the broad indemnity. Therefore, the broad indemnity applies. The Court would have to remand to determine what damages were proven by Hall Street.

THE COURT: I'm asking you what damages are you talking about.

MR. FINN: Those are the damages I mentioned before: The loss of the water right, which he found did occur but did not give us any damages for because of his

* * * *

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; **TYCO INDUSTRIES, INC.**, a Delaware corporation; **TYCO MANUFACTURING CORP.**, an Oregon corporation; **TYCO TOYS, INC.**, a Delaware corporation; and **VIEW-MASTER IDEAL GROUP, INC.**, an Oregon corporation,
Defendants.

APPENDIX TO DEFENDANT MATTEL, INC.'S OPENING BRIEF IN SUPPORT OF ITS MOTIONS TO REVIEW AND MODIFY THE ARBITRATION DECISIONS

* * * *

[SUBJECT TO CONFIDENTIALITY AGREEMENT—NOT TO BE DISCLOSED]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Case No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; **TYCO INDUSTRIES, INC.**, a Delaware corporation; **TYCO MANUFACTURING CORP.**, an Oregon corporation; **TYCO TOYS, INC.**, a Delaware corporation; and **VIEW-MASTER IDEAL GROUP, INC.**, an Oregon corporation,
Defendants.

NARRATIVE STATEMENT OF R. MICHAEL KENNEDY, Jr. SUBMITTED AS HIS DIRECT TESTIMONY

* * * *

[Subject to Confidentiality Agreement—Not to be Disclosed]

* * * *

I, R. Michael Kennedy, Jr., declare and state as follows:

1. I am currently Of Counsel in the law firm of Stradley Ronon Stevens and Young LLP in Philadelphia, Pennsylvania. I was formerly the General Counsel of Tyco (1987-1997). I graduated in 1966 from St. Joseph's University with a B.S. in physics, and graduated in 1969 from Villanova University Law School with a J.D. The facts contained in this statement are known to me of my own personal knowledge, except where stated otherwise, and I could competently testify to these facts.

2. At Tyco, I was one of the negotiators for the 1991 Lease between Tenant, Tyco as Guarantor, and Plaintiff for the Beaverton, Oregon Property (the "Property"), and the 1996 Lease Amendment between Tenant, Tyco as Guarantor, and Plaintiff for the Property. I was a signatory for Tyco for both the 1991 Lease and 1996 Lease Amendment.

3. The Lease with Plaintiff was intensely negotiated. The words chosen for the Lease provisions were specific, and mean what they say.

4. One of the issues that was intensely negotiated was our requirement that the tenant in the Property would not be responsible for the actions of GAF or its predecessors, who were previous tenants of the Property. Tyco was exceedingly reluctant to guarantee a lease with such an inequitable condition since GAF or its predecessors were unrelated third parties with no corporate relationship to Tyco. This was a fundamental requirement, and the lease that was eventually signed did not require Tyco to guarantee damages caused by GAF or its predecessors.

5. Attached as Exhibit A is a letter from me to Robert Hibbs regarding our requirement that Tyco not guarantee the actions of GAF or its predecessors, which I recognize as a letter prepared by myself. The letter demonstrates Tyco's concerns that the language Plaintiff was proposing for the indemnity, that Tenant (and Tyco as guarantor) be responsible for actions of "predecessors-in-interest," may be used in the future by Plaintiff to mean GAF or its predecessors, even though GAF or its predecessors were not corporate affiliates of, or predecessors in interest to, Tenant or Tyco.

6. Attached as Exhibit B is an internal Tyco memorandum from me to Arnold Thaler and Harry Pearce regarding how Tyco's concern that it not be responsible for the actions of GAF or its predecessors was met by additional lease language, which I recognize as a document prepared by myself.

7. Specifically, to address Tyco's concerns, I negotiated, and Plaintiff agreed, to add and expand upon two provisions that would not make Tyco responsible for guaranteeing the actions of GAF or its (GAF's) predecessors. First, in Section 13 of the Lease, if the Landlord was sued over failure to comply with environmental laws and the violation occurred outside of the term of the Lease, the Landlord was to seek a "fair and reasonable allocation of defense costs . . . based on Tenant's actual contribution to the damages which are the subject of such suit." This would mean that the Tenant would not be responsible for environmental costs caused by GAF or its predecessors.

8. Second, in Section 13 of the Lease, Tenant would not be held liable following expiration of the Lease for PCB, asbestos, hazardous waste, and other liability that was not caused directly or indirectly by Tenant or it's [*sic*] corporate predecessor-in-interest, View Master Industrial Group, Inc.

9. Another issue that was specifically negotiated was Tyco's requirement that its repair requirement before vacating the premises reflect the requirements of existing law, i.e., that the tenant return the Property in good repair, operating condition, working order, and good appearances, reasonable wear and tear excepted. The lease that was eventually signed comported with existing law. For example, the tenant did not have to construct entirely new buildings or

retrofit the property for future tenant use before vacating the premises.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 5, 2001, in Philadelphia, Pennsylvania.

/s/ R. Michael Kennedy, Jr.
R. MICHAEL KENNEDY, JR.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; **TYCO INDUSTRIES, INC.**, a Delaware corporation; **TYCO MANUFACTURING CORP.**, an Oregon corporation; **TYCO TOYS, INC.**, a Delaware corporation; and **VIEW-MASTER IDEAL GROUP, INC.**, an Oregon corporation,
Defendants.

APPENDIX TO DEFENDANT MATTEL, INC.'S OPENING BRIEF IN SUPPORT OF ITS MOTIONS TO REVIEW AND MODIFY THE ARBITRATION DECISIONS

* * * *

[SUBJECT TO CONFIDENTIALITY AGREEMENT—NOT TO BE DISCLOSED]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Case No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; **TYCO INDUSTRIES, INC.**, a Delaware corporation; **TYCO MANUFACTURING CORP.**, an Oregon corporation; **TYCO TOYS, INC.**, a Delaware corporation; and **VIEW-MASTER IDEAL GROUP, INC.**, an Oregon corporation,

Defendants.

NARRATIVE STATEMENT OF DENNIS M. WESOLOWSKI SUBMITTED AS HIS DIRECT TESTIMONY

* * * *

[Subject to Confidentiality Agreement—Not to be Disclosed]

* * * *

I, Dennis M. Wesolowski, declare and state as follows:

1. I am currently the Vice President and General Counsel of Fisher-Price, Inc. I was formerly the Vice President and Assistant General Counsel of Tyco. I was at Tyco in various capacities from 1989-1997. I graduated in 1976 from Marquette University with a B.A. in political science, and graduated in 1979 from Marquette University with a J.D. The facts contained in this statement are known to me of my own personal knowledge and if called to testify to those facts, I could competently do so.

2. At Tyco, I was one of the negotiators for the 1991 Lease between Tyco and Plaintiff for the Beaverton, Oregon Property (the "Property"), and the 1996 Lease Amendment between Tyco and Plaintiff for the Property.

3. The Lease between Tyco and Plaintiff was negotiated between the parties. The words chosen for the Lease provisions were specific, and mean what they say.

4. One of the issues that was intensely negotiated was Tyco's requirement that the tenant in the Property would not be responsible for the actions of GAF or its predecessors, who were previous tenants of the Property. Tyco would not sign a lease with such an inequitable condition since GAF or its predecessors were unrelated third parties with no corporate relationship to Tyco. This was a fundamental requirement, and the lease that was eventually signed did not require Tyco to be responsible for damages caused by GAF or its predecessors.

5. Another issue that was specifically negotiated was Tyco's requirement that its repair requirement before vacating the premises reflect the requirements of existing law, i.e., that the tenant return the Property in good repair, operating condition, working order, and good appearances, reasonable wear and tear excepted. The lease that was eventually signed comported with existing law. For example, the tenant did not have to construct entirely new buildings or retrofit the property for future tenant use before vacating the premises.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 30, 2001, in East Aurora, New York.

/s/ Dennis M. Wesolowski
DENNIS M. WESOLOWSKI

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; TYCO INDUSTRIES, INC., a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; and VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

APPENDIX TO DEFENDANT MATTEL, INC.'S OPENING BRIEF IN SUPPORT OF ITS MOTIONS TO REVIEW AND MODIFY THE ARBITRATION DECISIONS

* * * *

[SUBJECT TO CONFIDENTIALITY AGREEMENT—NOT TO BE DISCLOSED]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Case No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; TYCO INDUSTRIES, INC., a Delaware corporation; **TYCO MANUFACTURING CORP.**, an Oregon corporation; **TYCO TOYS, INC.**, a Delaware corporation; and **VIEW-MASTER IDEAL GROUP, INC.**, an Oregon corporation,

Defendants.

ATTORNEYS' FEES AND COSTS:
ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REMAND

* * * *

FINDINGS OF FACT/CONCLUSIONS OF LAW

1. Incorporated herein by reference are the "Amended Arbitrator's Findings of Fact and Conclusions of Law on Remand" issued September 3, 2002, and the "Prevailing Party: Arbitrator's Findings of Fact and Conclusions of Law" issued October 2, 2002.

2. Hall Street is the "prevailing party" in this litigation and is entitled to its reasonable attorneys' fees, costs, and expenses incurred as a result of this litigation pursuant to paragraph 24 of the Lease, which provides in relevant part:

> "If Tenant or Landlord engage the services of an attorney to collect monies due to or bring any action for any relief against the other, declaratory or otherwise,

> arising out of this Lease, ... , the losing party shall pay the prevailing party a reasonable sum for attorneys' fees, costs and expenses in such suit, at trial and on appeal, and **such attorneys' fees, costs and expenses shall be deemed to have accrued on the commencement of such action**." (Emphasis added.)

The emphasized language is clearly intended to allow for attorneys' fees, costs and expenses incurred prior to the commencement of litigation and is not a basis for interest and late fees on such fees and costs from the date of commencement of the litigation.

4. Section 4 of the Lease provides for a 5% late fee and 18% per annum interest on delinquent rent or other sums payable by the tenant. I find that this provision has no application to Section 24 or to any of the issues in this case.

5. Hall Street prevailed on six of the eight claims before the arbitrator. Although the award was significantly less than the amount sought, Hall Street obtained declaratory relief requiring Mattel to indemnify Hall Street for all future costs Hall Street may be required to pay to DEQ or to expend as a result of a DEQ consent decree or order relating to the environmental cleanup of the Property, a substantial victory. Hall Street has properly excluded time and expert witness fees specifically charged in conjunction with the repair issue on which Mattel prevailed.

6. Mattel prevailed on the lease termination issue before the Court. Hall Street has properly excluded from its claim any attorneys' fees or costs associated with the litigation of that issue.

7. The time expended by Schwabe, Williamson & Wyatt (SWW) in behalf of Hall Street and their hourly rates are reasonable. However, considering the factors set forth in ORS 20.075 and considering the criteria set forth in Faubion v. City of Prineville, No. CV-00-976-HU, 2001 U.S. Dist.

LEXIS 19678 (D. Or. Nov. 7, 2001), it is appropriate to reduce the attorney fee award by

* * * *

CONCLUSION

IT IS THEREFORE the Order of the Arbitrator, pursuant to the Arbitration Agreement between the parties, as follows:

1. Hall Street is awarded judgment for attorneys' fees in the sum of $248,684.67 and for costs and expenses in the sum of $85,629.99 against Mattel, Inc.
2. Hall Street's counsel is directed to prepare and submit a form of Arbitration Award incorporating the judgments awarded herein and in the "Amended Arbitrator's Findings of Fact and Conclusions of Law," after reducing the latter judgments by any late fees and interest included therein.
3. Any objections by Mattel's counsel to the form of Arbitration Award will be resolved in summary fashion via conference telephone call.
4. Mattel shall pay the resulting judgment within 30 days of the signing of the Arbitration Award.
5. Interest shall accrue at the statutory rate of 9% from the date of the signing of the Arbitration Award.

Dated this 28th day of October, 2002.

/s/ Larry T. Coady
LARRY T. COADY
Arbitrator

[Arbitration Trial Exhibit 102, filed in Docket No. 130, Hall Street Associates, L.L.C. v. Mattel, Inc. et al, United States District Court for the District of Oregon, Case No. 00-355-JO]

LEASE AGREEMENT
Between
Cascade Square Associates and
View-Master Ideal Group, Inc.

THIS LEASE (the "Lease") made on this 5th day of March, 1991 between CASCADE SQUARE ASSOCIATES, a Washington partnership ("Landlord") and VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation, f/k/a View-Master International Group, Inc. ("View-Master" or "Tenant"), a wholly-owned subsidiary of Tyco Toys, Inc.

Recitals

A. Landlord and View-Master are Parties to that certain Lease (the "Original Lease") dated June 1, 1985 for the Premises (described below). Landlord and Tenant wish to terminate the Original Lease and enter into this Lease providing for a longer lease term and the covenants and conditions stated below with Tyco Toys, Inc. as Guarantor.

B. View-Master designed and constructed the Premises as a toy manufacturing facility at a time when it owned the underlying real property. View-Master has been the only party to occupy or conduct business on the Premises. View-Master continued to lease the Premises from Landlord pursuant to the Original Lease which provided that View-Master indemnified Landlord for its actions with respect to the Premises or any condition of the Premises. The parties intended that such indemnity applied to Tenant's actions in constructing the Premises, including its choice of building materials, and all activities with respect to the Premises whether or not they occurred before the date of the Original Lease.

C. In executing this Lease, the parties intend that Tenant shall assume View-Master's obligation to indemnify Landlord under the Original lease, which indemnity obligations shall survive termination of the Original lease, and intend that Tenant shall indemnify Landlord for any actual or potential liability Landlord may be exposed to as a result of Tenant's future actions with respect to the Premises. Because the Premises are a self-contained manufacturing facility constructed and previously owned by View-Master, and because the Original Lease was on a triple net basis, Landlord has not been actively involved in managing the Premises and relied on View-Master's agreement to indemnify Landlord for its actions.

In consideration of the above recitals, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Landlord and Tenant agree:

1. **LEASE DATA AND EXHIBITS**:

a. Leased Premises. The leased premises (the "Premises") consist of the following:

The real property legally described on Exhibit A (the "Land") and several buildings, parking and access areas, a water-tower, and other improvements which are currently used as a manufacturing, warehouse and office facility (collectively the "Building") commonly known as 8585 S.W. Hall Boulevard, Beaverton, Oregon and outlined on the drawing attached as Exhibit B.

b. Lease Commencement Date. The Lease commencement date is December 1, 1990.

c. Lease Expiration Date. The Lease expiration date is May 31, 1997.

d. Rent. The monthly rent ("Rent") shall be:

December 1, 1990 - January 31, 1992	$62,113.33
February 1, 1992 - January 31, 1994	$68,324.67
February 1, 1994 - January 31, 1996	$75,157.17
February 1, 1996 - May 31, 1997	$82,672.92

e. Permitted Use. The Premises shall be used only for Tenant's toy manufacturing and warehousing and related uses, and for no other purpose or use without the written consent of Landlord.

f. Notice and Payment Addresses:

Landlord: Cascade Square Associates
c/o John G. Eyler
2131 — 86th NE
Bellevue, Washington 98004

with a copy to: Short Cressman & Burgess
Attn: Robert E. Hibbs
3000 First Interstate Center
999 Third Avenue
Seattle, Washington 98104-4008

Tenant: View-Master Ideal Group, Inc.
8585 S.W. Hill Boulevard
Beaverton, Oregon

With a copy to: R. Michael Kennedy, Jr.
Tyco Toys, Inc.
6000 Midlantic Drive
Mt. Laurel, N.J. 08054

2. PREMISES: Landlord leases to Tenant, and Tenant leases from Landlord, upon the terms and conditions herein, those certain Premises described in Section 1(a) hereof located on the Land in Beaverton, Oregon.

3. TERM OF LEASE; TERMINATION OF ORIGINAL LEASE; EXTENSION TERM: The Original Lease shall terminate on the Lease Commencement Date. The Lease shall commence on the Lease Commencement Date specified in Section 1(b) and shall expire on the Lease Expiration Date specified in Section 1(c). The Lease will automatically extend beyond the Lease Expiration Date without further action of the parties for additional, successive terms of one year each (the "Extension Terms"), on the same terms and conditions as set forth herein except that the term will be one year and the Rent will be an amount mutually agreed upon by the parties; provided, that either party may elect to terminate this Lease effective as of the Lease Expiration Date by giving written notice of such termination to the other party at least 24 calendar months prior to the termination date specified in the notice. However, in the event the parties do not agree in writing upon the rental to be paid during an Extension Term at least 22 calendar months prior to the commencement of that extension term, this Lease will automatically terminate at the end of the terms (Fixed and Extension) for which Rent has previously been agreed to by the Parties. Any extended term will commence on the day following expiration of the preceding term.

The preceding portion of this Section 3 notwithstanding, this Lease will be considered to be a year-to-year lease in that Tenant may elect to terminate its tenancy (i.e., occupancy) of the Premises by delivering written notice of such termination to Landlord between 8:00 a.m. and 5:00 p.m. on May 31 of each lease year commencing in 1992. Such termination notice shall be effective twelve (12) calendar months from the date of said Notice. Notwithstanding the giving of the foregoing Notice, Tenant's obligation to pay rent, taxes and other obligations, to maintain and repair the Premises, and to perform its other obligations under the Lease, shall continue through May 31, 1997. Notwithstanding the prior sentence, Landlord and Tenant agree that this provision shall not alter or modify

Landlord's duty, under Oregon law, to mitigate damages in the event of breach of the Lease Agreement.

4. **RENT**: Tenant shall pay Landlord the Rent stated in Section 1(d) and any other payments due under this Lease without demand, deduction or offset, payable in lawful money of the United States in advance on or before the tenth (10th) day of each month to Landlord at the place specified in Section 1(f), or to such other party or at such other address as Landlord may hereafter from time to time designate in writing. Rental for any partial month at the beginning or end of the lease term shall be prorated. Notwithstanding anything herein to the contrary, the rent payable by Tenant shall in no event be less than the Rent specified in Section 1(d) of this Lease.

If any Rent or other sums payable by Tenant to Landlord under this Lease shall not be paid by the fifteenth (15th) day of the month, Tenant shall pay to Landlord in addition to said amount due and for the cost of collecting and handling such late payment an amount, equal to the greater of $100 or five percent (5%) of the delinquent amount. In addition, such delinquent Rent or other sums payable by Tenant shall bear interest at the rate of one and one-half percent (1.5%) per month (unless such amount is in excess of the highest lawful rate permitted under applicable laws in which case the highest lawful rate shall apply) calculated from the original due date of such delinquent amounts to the date of payment.

5. USES:

a. Permitted Use. The Premises are to be used only for the uses specified in Section 1(e) hereof (the "Permitted Use"), and for no other business or purpose without the written consent of Landlord. The interpretation of such stated uses shall be narrowly construed.

b. Compliance with Laws. In connection with such use, Tenant shall comply at its expense with all applicable

laws, rules and regulations of any public authority, including but not limited to those regarding maintenance, operation, and use of the Premises, use of machinery and signs on the Premises, and those regarding discharging hazardous materials of any kind or other waste. Any interruption in use resulting from a governmental agency requiring either Landlord or Tenant to make building repairs or to replace building materials View-Master used in constructing the Premises shall not terminate this Lease or Tenant's obligation to pay Rent.

c. Nuisance. Tenant shall not conduct or permit any activities on the Premises that create a nuisance or damage the reputation of the Premises or Landlord's adjoining property, or are reasonably offensive to Landlord, or other owners or users of adjoining property. Tenant will cooperate with Landlord and provide at Tenant's expense, within sixty (60) days of written notice from Landlord, reasonable sound insulation for any equipment and machinery installed in or upon the premises or the Building subsequent to the date of this Lease, so that adjoining or nearby tenants or users are not unreasonably disturbed by the operation of the bead tank or other equipment or machinery.

d. Increase in Insurance Rates. Tenant will be responsible for any additional costs incurred by Landlord as a result of any change in use of the Premises by Tenant causing an increase in the fire or other insurance rates on Landlord's adjacent property or any change in use of the Premises by Tenant that prevents Landlord from taking advantage of any current or future ruling of the Oregon Insurance Rating Bureau or its successor permitting reduced premium rates for fire insurance policies on any portion of Landlord's adjacent property.

e. Machinery Overloads. Tenant shall refrain from any activity or installing any machinery that will overload the floor or electrical circuits or other components of the Building or create undue stress or strain on any part of the Building. If Landlord believes that there is an overload or undue

stress or strain, Landlord may select a qualified electrical engineer whose opinion will control regarding electrical circuits and a qualified engineer or architect whose opinion will control regarding floor loads or other stresses and any inspections by such persons shall be shared by Landlord and Tenant. In the event that the electrical engineer, engineer or architect finds that the overload, stress or strain is sufficient to potentially endanger or injure the Building. Tenant shall immediately take all, necessary steps to alleviate the overload or relieve the stress or strain, either by reinforcing the Building at tenant's sole expense or by reducing the load in a manner satisfactory to Landlord. If Tenant uses or installs power driven machinery, Tenant will pay for all electricity required to use the equipment and for any additional air conditioning needed as a result thereof.

f. Removal of Snow, Ice, and Debris. Tenant shall keep the sidewalks abutting the Premises and Building entrances free and clear of snow, ice, debris, and obstructions of every Tenant shall keep the roof and drains leading from the roof free and clear of snow, ice, debris, or other obstruction which might overload, damage or endanger the roof or adjoining premises, sidewalks, or streets. In performing such work, Tenant shall take all reasonable precautions to avoid damage.

6. TAXES:

a. Obligation for Payment. Tenant shall timely pay all taxes (collectively the "tax"), including without limitation real estate and personal property taxes and assessments assessed, levied, confirmed, or imposed during the term of this Lease whether or not now customary or within the contemplation of Landlord and Tenant: (1) upon, measured by, or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, and other personal property located in the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant

regardless of whether title to such improvements is in Tenant or Landlord; (2) upon or measured by the Rent, including without limitation any gross receipts tax or excise tax levied by the federal government or any other governmental body with respect to the receipt of monthly rent; (3) upon or with respect to Tenant's possessing, leasing, operating, managing, maintaining, altering, repairing, using, or occupying the Premises or any portion of the Premises; (4) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises; (5) upon the Premises and all personal property, furniture, fixtures, and equipment, and all replacements, improvements, or additions to them, whether owned by Landlord or Tenant; and (6) based in whole or in part on a monthly rent, whether made in addition to or in substitution for any other tax.

Notwithstanding the foregoing, the existing LID established for constructing Cascade Avenue and any other assessments incurred now or in the future, assessed against the Premises and Landlord's adjacent property shall be allocated between Landlord and Tenant in direct proportion to the relative square footage of Landlord's adjoining property identified on Exhibit B and the square footage of the Premises. Further LID's benefitting the Premises and Landlord's adjoining property identified on Exhibit B shall also be allocated in direct proportion to the relative square footage of those properties.

b. Taxes Payable in Installments. Tenant may use any available installment payment plans for special assessments and in such case shall be obligated to pay only those installments falling due prior to the date this Lease expires. Taxes and assessments for the last year of this Lease shall be prorated between Landlord and Tenant on the basis of the portion of the tax year that Tenant occupies the Premises.

c. Other Impositions. Tenant will not be obligated to pay local, state, or federal net income taxes assessed against

Landlord; local, state or federal capital levy of Landlord; or sales, excise, franchise, gift, estate, succession, inheritance or transfer taxes of Landlord.

d. Right to Contest Taxes. Tenant will have the right to contest the amount or validity, in whole or in part, of any tax by appropriate proceedings diligently conducted in good faith, only after paying such tax or posting such security as Landlord may reasonably required in order to protect the Premises or Landlord against loss, liability or forfeiture. Upon the termination of any such proceedings, Tenant will pay the amount of such tax or part of such tax as finally determined, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties, or other related liabilities. Landlord will not be required to join in any such contest or proceedings unless the provisions of any law or regulations then in effect will require that such proceedings be brought by or in the name of Landlord. In that event Landlord will join in such proceedings or permit them to be brought in its name, however, Landlord will not be subject to any liability for the payment of any costs or expenses in connection with any such contest or proceedings, and Tenant will indemnify Landlord against and save Landlord harmless from any such costs and expenses.

7. UTILITIES: Tenant will pay the appropriate suppliers for all water, gas, electricity, light, heat, telephone, power, and other utilities and communications services used by Tenant on the Premises during the term, whether or not such services are billed directly to Tenant. Tenant will also procure, or cause to be procured, without cost to Landlord, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such service to and upon the Premises and sewer, solid waste or other dis-

posal from the Premises. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

8. REPAIRS AND MAINTENANCE:

a. Maintenance of the Premises. Tenant will, at its sole cost and expense, maintain the Premises and make repairs to the Premises, including without limitation the heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems, insulation and fireproofing and prevention systems, structural roof, walls, and foundations, the fixtures and appurtenances to the Premises, other improvements, sidewalks and parking areas as and when required or requested by any governmental agency or when needed to preserve them in good repair, operating condition, working order and good appearances, and regardless of whether the repairs are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, or contractors. All such repairs will be in quality and class equal to the original work or installations. If Tenant fails to make such repairs Landlord may make them at the expense of Tenant and such expense will be collectible as additional rent and will be paid by Tenant within fifteen (15) days after delivery of a statement for such expense. Provided, however, Landlord shall have no obligation to make any repairs or make any maintenance on the Premises.

b. Alterations. Tenant shall not alter the Premises nor change the color of the exterior of the Building without Landlord's prior written consent which consent shall not be unreasonably withheld. All alterations shall be made in a good and workmanlike manner, and any alterations and fixtures installed by Tenant shall become a part of the Premises and shall belong to Landlord.

c. Storage. Tenant shall not store anything outside of the Building unless the items stored and the storage areas are approved in writing by Landlord. The design and location of screens for storage areas must be approved in writing by Landlord. Trash and garbage receptacles shall be kept covered and concealed.

d. Regulations. Landlord shall have the right to make and enforce reasonable rules and regulations consistent with this Lease for the purpose of regulating access and vehicular use of the Premises and adjacent property. Copies of such rules and regulations shall be furnished to Tenant and shall be complied with as if part of this Lease.

e. Well Water. Tenant shall pay for the cost of any well water utilized for irrigation purposes on the Cascade Avenue LID property.

f. Signs. During the lease term, Landlord will permit Tenant to maintain signs sufficient to identify the business of Tenant and Tenant's access routes. Tenant will be permitted to maintain existing signs on Landlord's adjoining property, so long as the signs are consistent with Landlord's development of the adjoining property and with reasonable aesthetic standards. If Tenant's access routes change, Landlord will provide adequate replacement locations for Tenant to maintain signs sufficient to identify the business of Tenant and Tenant's access routes. Any changes in the existing or replacement signs or sign locations will be subject to the mutual approval of the parties.

9. ACCESS: Tenant shall permit Landlord and its agents and employees to enter into and upon the Premises at all reasonable times and upon reasonable notice (except in the event of emergency) for the purpose of inspecting the same or for the purpose of repairing, altering or improving the Premises or the Building. Nothing contained in this Section shall

be deemed to impose any obligation upon Landlord not expressly stated elsewhere in this Lease. Landlord shall have the right to enter the Premises for the purpose of showing the Premises to prospective tenants within the period of 180 days prior to the Lease expiration date or any sooner termination of the Lease.

10. LIEN FOR RENT: Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises, and such property shall be and remain subject to such lien and security interest of Landlord for payment of all Rent and other sums agreed herein to be paid by Tenant. The lien and security interest shall be subordinate to the current security interest held by Mid-Atlantic Bank, as agent, and is in addition to and cumulative to any Landlord's liens provided by law. Landlord agrees not to enforce the lien and security interest, until Tenant has defaulted.

11. DAMAGE OR DESTRUCTION:

a. Damage and Repair. If the Building is destroyed and rendered unusable by fire or other casualty and cannot be restored during a 180 day period of construction, then either party may elect to terminate this Lease by giving written notice of such termination to the other party within 60 days following the date of damage. Otherwise, Tenant shall proceed to restore the Building to a condition comparable in function and value to that existing prior to the damage, and the monthly rent shall not be abated. If this Lease is, not terminated, Landlord will disburse the net insurance proceeds to Tenant as restoration progresses, up to the total cost and expenses of restoration, in a manner similar to that in which proceeds of a construction loan are customarily disbursed.

b. Business Interruption. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any damage, destruc-

tion, repair, or restoration of any portion of the Premises or of the Building unless such damage was caused solely by the negligence of the Landlord.

c. Tenant Improvements. Landlord will not carry insurance of any kind for the protection of Tenant or any improvements, whether paid for by Landlord or by Tenant, or on Tenant's furniture, fixtures, equipment, improvements or appurtenances and Landlord shall not be obligated to repair any damage thereto or replace the same.

d. Express Agreement. The provisions of this Section shall be considered an express agreement governing any case of damage or destruction of the Building or Premises by fire or other casualty.

12. HAZARDOUS BUILDING MATERIALS AND WASTE:

a. Compliance With Laws. Tenant shall comply with all federal, state, and local environmental laws and regulations in its use of the Premises, including but not limited to the Resource Conservation and Recovery Act, as amended (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA). If Tenant shall treat, store, or dispose of hazardous wastes on the Premises as defined in RCRA, then Tenant shall obtain any necessary permits and identification numbers for such treatment, storage or disposal and provide Landlord with the identification numbers and copies of the permits. Tenant shall also assume all responsibility for, and costs associated with, any closure and/or post-closure care required under any permit obtained by Tenant or otherwise for treatment, storage, or disposal of hazardous wastes. Tenant shall obtain any necessary permits for any underground storage tanks either existing or additional as required by the Oregon Department of Environmental Quality, and/or the Environmental Protection Agency notify the proper authorities, and provide Landlord with copies of such permits and notifications. Furthermore,

Tenant shall indemnify, hold harmless and defend Landlord against all costs and claims associated with a release or leak of the tank contents whether occurring before the Lease Commencement Date, or during the Lease term.

b. Release of Hazardous Waste. Tenant shall use its best efforts and safety practices to prevent the release by Tenant, its agents or employees of hazardous substances as herein defined on the Premises. Tenant shall immediately notify Landlord in writing of any release of hazardous waste. In addition, Tenant assumes liability for the use or presence in the Building materials or on or about the Premises of any hazardous waste including, but not limited to asbestos or lead. Tenant assumes all responsibility for the investigation and cleanup of any such release or presence or use of hazardous Building materials and shall indemnify and defend Landlord, its officers, agents, and employees, against and from any and all losses, costs, damages, expenses (including environmental abatement costs or liabilities directly or indirectly resulting or arising from any such release or presence or use of hazardous building materials. Subject to the conditions of Section 12.c. below, this provision shall continue in full force and effect regardless of whether this Lease is terminated pursuant to any other provision or the Premises are vacated by Tenant.

c. To the extent Tenant has been in compliance with applicable environmental laws then, notwithstanding the foregoing language in Section 12.b. above, Tenant shall not be held liable following the expiration of this Lease term for the following:

(i) the removal, disposal and replacement of electrical transformers on the Premises containing PCB's which transformers have not previously and are not then emitting, or leaking PCB's or other hazardous substances;

(ii) the removal, disposal and replacement of any asbestos which was located on the Premises

prior to Tenant's original occupancy, has not been disturbed since its original installation and is not at the time of the expiration of the Lease term currently in a friable or other condition that it could pose a danger to human health or the environment;

(iii) the removal and disposal of any hazardous waste on the Premises, the presence or use of which hazardous waste has not been caused directly or indirectly by the acts of the Tenant or View-Master Ideal Group, Inc. or their agents, officers or employees, visitors or invitees. A determination of causation by a state or federal court which is not subject to further appeal, shall be final as regards to the parties hereto.

If Landlord decides, at the time of the expiration of the Lease, to demolish or otherwise tear down the Building, and not to relet the Premises, then Tenant shall be liable only for amounts that Tenant would have had to expend had the Building remained standing and not for any additional costs associated with the demolition or tearing down of the Building.

d. Hazardous waste, hazardous building materials or hazardous substances for the purposes of this Lease shall be defined to include, but shall not be limited to, the following:

(a) Asbestos or any asbestos containing material.

(b) Any substance defined as "hazardous substance," hazardous material," or "toxic. Substance" in

(1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended;

(2) the Hazardous Materials Transportation Act, as amended;

(3) the Resource Conservation and Recovery Act, as amended; and

(4) any similar federal, state, or local law or regulation now or hereafter in effect;

(c) Polychlorinated Biphenyl's (PCB's).

(d) Flammable or combustible materials.

(e) Radioactive materials.

(f) Infectious wastes.

13. INDEMNIFICATION AND INSURANCE:

a. Indemnification. Tenant shall defend and indemnify Landlord and save it harmless from and against any and all liablity, damages, costs, or expenses, including attorneys' fees, arising from any act, omission, or negligence of Tenant or its officers, contractors, licensees, agents, servants, employees, guests, invitees, predecessors-in-interest, or visitors in or about the Building or Premises as a result of any act, omission or negligence of Tenant, or its officers, contractors, licensees, agents, servants, employees, guests, invitees, predecessors-in-interest, or visitors, whether occurring in the construction of or choice of building materials for the building, occurring during or prior to the original Lease, during this Lease, relating to discharging hazardous materials, or arising from any breach or default under this Lease by Tenant.

In the event that Landlord is sued for failure to comply with local, state or federal environmental laws and/or regulations regarding the Premises, and it is alleged the spill or violation occurred over a number of years, some portion of which time is outside of the term of this Lease or the Original Lease, then Landlord shall agree to seek to have the other tenants (whether prior or subsequent to the Lease or Original Lease) pay for their prorated amount of Landlord's defense costs in such suit. Tenant's obligation to defend shall not be delayed but shall be limited to its allocable portion of such

defense costs. Landlord, upon learning of a suit or a potential suit against it under this paragraph shall notify Tenant thereof (the "Notice"). During the following thirty (30) days from such notice the parties shall attempt to negotiate a fair and reasonable allocation of defense costs to be paid by Tenant for such action based on Tenant's actual contribution to the damages which are the subject of such suit. If the parties are unable to agree upon a fair and reasonable allocation then such allocation shall be fixed by an arbiter agreed to by the parties. If the parties cannot agree on a single arbiter, then the allocation shall be fixed by a board of arbiters consisting of one arbiter selected by Landlord, one arbiter selected by Tenant, and a third arbiter selected by the two arbiters so selected (the "Board of Arbiters"). Such Board of Arbiters shall, by a majority vote, determine a fair and reasonable allocation within forty-five (45) days of the Notice and such determination shall be binding upon the parties.

Should either party fail to timely, an arbiter pursuant to this Section, should the two arbiters selected fail to select a third, or should a majority of the Board of Arbiters fail to timely agree upon the allocation, then the allocation shall be determined by the presiding judge of the Superior Court of Washington County, Oregon, before whom either party may bring this issue. Each party shall bear one-half of the cost of (i) the arbiter selected by them jointly, (ii) the Board of Arbiters, or (iii) the arbiter selected by the presiding judge of the Superior Court. Any arbitration of this matter shall be conducted pursuant to the Commercial Case Arbitration Rules of the American Arbitration Association.

To the extent Tenant has been in compliance with applicable environmental laws then, notwithstanding the foregoing language in Section 13.a. above, Tenant shall not be held liable following the expiration of this Lease term for the following

(i) the removal, disposal and replacement of electrical transformers on the Premises containing PCB's which transformers have not previously and are not then emitting or leaking PCB's or other hazardous substances;

(ii) the removal, disposal and replacement of any asbestos which was located on the Premises prior to Tenant's original occupancy, has not been disturbed since its original installation and is not at the time of the expiration of the Lease term currently in a friable or other condition that it could pose a danger to human health or the environment;

(iii) the removal and disposal of any hazardous waste on the Premises, the presence or use of which hazardous waste has not been caused directly or indirectly by the acts of the Tenant or View-Master Ideal Group, Inc. or their agents, officers or employees, visitors or invitees. A determination of causation by a state or federal court which is not subject to further appeal, shall be final as regards to the portion hereto.

(iv) Any other liability, damage, cost, or expense which has not been caused directly or indirectly by the acts of Tenant or View-Master Ideal Group, Inc. or their agents, officers or employees, visitors or invitees. A determination of causation by a state or federal court which is not subject to further appeal, shall be final as regards to such causation.

If Landlord decides, at the time of the expiration of the Lease, to demolish or otherwise tear down the Building, and not to relet the Premises, then Tenant shall be liable only for amounts that Tenant would have had to expend had the

Building remained standing and not for any additional costs associated with the demolition or tearing down of the Building.

The foregoing provisions shall not be construed to make Tenant responsible for loss, damage, liability or expense resulting from injuries to third parties to the extent caused by the intentional or negligent acts of Landlord, or its officers, contractors, licensees, agents, or employees.

Landlord shall not be liable for any loss or damage to. person or property sustained by Tenant or other persons, which may be caused by theft, or by any act or neglect of any third parties. In addition, Landlord shall not be liable to Tenant, for any damage to the Premises or for any loss, damage or injury to any property therein or thereon resulting from acts by third parties or occasioned by bursting, rupture, leakage or overflow of any plumbing or other pipes (including, without limitation, water, steam, and/or refrigeration lines), sprinklers, tanks, drains, drinking fountains or washstands or, other similar cause in, above, upon or about the Premises, Building, or the Land.

b. Liability Insurance. Tenant shall, at its own expense, keep and maintain in full force and effect during the term of this Lease, a policy of comprehensive broad form public liability insurance insuring Tenant's activities and those of Tenant's officers, contractors, licensees, agents, servants, employees, guests, invitees or visitors with respect to the Premises, the Building, or the Land against loss, damage or liability for personal injury or death or loss or damage to property with a limit of not less than $1,000,000 for injury to one person in one occurrence, $3,000,000 for injuries to more than one person in one occurrence, and $8,000,000 property damage, or such higher limits as Landlord requires in the reasonable exercise of its discretion from time to time. Insurance required under this Section shall be with companies rated A-XV or better in Best's Insurance Guide. No insurance

policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or reduction in coverage except after thirty (30) days prior written notice to Landlord. Tenant shall deliver to Landlord upon the Lease commencement date and from time to time thereafter copies of policies of such insurance or certificates evidencing the existence and amounts of the same naming Landlord as an additional insured or with such other loss payable clauses satisfactory to Landlord. The insurance policies shall contain a contractual liability endorsement referring to this Lease. In no event shall the limit of the policies be considered as limiting the liability of Tenant under this Lease.

c. Property Damage Insurance. Tenant will maintain property damage insurance on Tenant's personal property on the Premises. Tenant will also maintain all risk property damage insurance on the Building and improvements on the Premises at Tenant's expense, on a replacement cost basis and in an amount sufficient to avoid application of any co-insurance clause.

d. Waiver of Subrogation. Whether the loss or damage is due to the negligence of either Landlord or Tenant, their agents or employees, or any other cause, Landlord and Tenant release and relieve the other and their agents or employees, from responsibility for, and waive their entire claim of recovery for (i) any loss or damage to the real or personal property of either located anywhere in the Building or on the Premises, including the Building or Premises itself arising out of or incident to the occurrence of any of the perils which are covered by their respective fire insurance policies, with extended coverage endorsements, or (ii) any loss resulting, from business interruption at the Premises or loss of rental income from the Building or Premises, arising out of or incident to the occurrence of any of the perils which are covered by the business interruption insurance policy and by the loss of rental income insurance policy held by Landlord or Tenant.

Each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party.

14. ASSIGNMENT AND SUBLETTING:

a. Assignment or Sublease. Tenant shall not assign; mortgage, encumber or otherwise transfer this Lease or sublet the whole or any part of the Premises without in each base first obtaining Landlords written consent, which consent may be withheld in the reasonable exercise of Landlord's discretion. No such assignment subletting or other transfer shall relieve Tenant of any liability under this Lease. Consent to any such assignment, subletting, or other transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment, subletting or transfer. If such consent is requested, Landlord reserves the right to terminate this Lease, or, if consent is requested for subletting less than the entire Premises, to terminate this Lease with respect to the portion for which Such consent is requested at the proposed effective date of such subletting, in which event Landlord shall enter into the relationship of landlord and tenant with any such subtenant or assignee, based on the rent (and/or other compensation) and the term agreed to by such subtenant or assignee and otherwise upon the same terms and conditions of this Lease.

b. Assignee/Sublessee Obligations. As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor hereof for the payment of Rent and performance of all terms, covenants and conditions of this Lease. In connection with any sublease or assignment, Tenant shall provide Landlord with copies of all assignments, subleases and assumption instruments.

15. LIENS AND INSOLVENCY:

a. Liens. Tenant shall keep the Premises and the Building free from any liens arising out of any work performed and materials ordered or obligations incurred by or on behalf of Tenant and hereby indemnifies and holds Landlord harmless from any liability from any such liens. In the event any lien is filed against the Building, the Premises or the Land by any person claiming by, through or under Tenant, Tenant shall, upon request of Landlord, at Tenant's expense, immediately furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord, the Building, Premises and the Land against any and costs and expenses, including attorneys' fees, which Landlord could possibly incur as a result of such lien.

b. Insolvency. If Tenant becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, or assignee or other liquidating officer is appointed for the business of Tenant, then Landlord may terminate Tenant's right of possession under this Lease at Landlord's option and in no event shall this Lease or any tights or privileges hereunder be an asset of Tenant under insolvency or reorganization proceedings or an asset of the bankruptcy estate in and bankruptcy proceedings. Landlord's right to terminate shall be subject to the laws and procedures of federal or state bankruptcy or insolvency laws.

The appointment of a trustee in bankruptcy or of a receiver for the business or property of Tenant shall be deemed a material default and breach of this Lease by Tenant, unless the trustee or receiver, within ten (10) days after appointment in the case of any delinquency in paying Rent or any other payment required under this Lease, or within sixty (60) days after appointment in the case of any default other than the making of such payments (i) cures any outstanding delinquency or default, (ii) fully compensates Landlord for any loss resulting from such delinquency or default, and (iii)

provides adequate assurances of future performance under this Lease, which assurances may at Landlord's option, depositing with Landlord additional security in a form acceptable to Landlord or the Bankruptcy court and Trustee in an amount not to exceed the equivalent of two (2) months Rent determined at the time of appointment.

16. DEFAULTS:

a. Cumulative Remedies. All rights and remedies of Landlord shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies provided in this Lease, Landlord shall be entitled to an injunction restraining Tenant from violating or attempting to violate any of the covenants, agreements or conditions of this Lease.

b. Tenant's Right to Cure. Time is of the essence hereof. However, Tenant shall have a period of ten (10) days, from the date of written notice from Landlord to Tenant within which to cure any default in the payment of Rent and other sums due hereunder. Any delinquent Rent or other amounts due under this Lease shall bear interest at the rate of 18% per annum from the date due until paid, unless such rate is higher than the highest lawful rate, in which case the highest lawful rate shall apply. Tenant shall have a period of thirty (30) days from the date of written notice from Landlord to Tenant within which to cure any other default hereunder; provided, however, that with respect to any such default which cannot be cured within 30 days the default shall not be deemed to be uncured if Tenant commences to cure within 30 days and Tenant diligently prosecutes the cure thereof.

c. Vacation and Abandonment. Any vacation or abandonment by Tenant shall be considered a default with no right to cure, allowing Landlord to re-enter the Premises under Section 16(d). Vacation shall be defined as absence from the

Premises for thirty (30) days or more. Abandonment shall be defined as absence from the Premises for five (5) days or more while Tenant is in default.

d. Landlord's Re-Entry. Upon an uncured default of this Lease by Tenant, Landlord, in addition to any other rights or remedies it may have, at its option, may by formal or summary court proceedings enter the Premises or any part thereof, and expel, remove, put out or lock out Tenant or any other persons who may be therein, together with all personal property found therein; and Landlord may terminate this Lease, or it will attempt in good faith from time to time, without terminating this Lease and as agent of Tenant, re-let the Premises or any part thereof for such term or terms (which may be for a term a less than or extending beyond the term hereof) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to repair, renovate, remodel, redecorate, alter and change the Premises, Tenant remaining liable therefor and for any deficiency computed as hereinafter set forth. In the case of any default, re-entry and/or dispossession by summary proceedings or otherwise, all Rent and other sums due pursuant to this Lease shall become due thereupon and be paid up to the time of such re-entry or dispossession, together with such expenses as Landlord may incur for attorneys' fees, advertising expenses, brokerage fees and/or putting the Premises in good order or preparing the same for re-rental, together with interest (at the rate of the lesser of 18% or the highest lawful rate) and handling charges thereon accruing from the date of any such expenditure by Landlord.

e. Re-Letting the Premises. At the option of Landlord, rents received by Landlord from such re-letting shall be applied first to the payment of any indebtedness from Tenant, to Landlord other than Rent due hereunder; second to the payment of any costs and expenses of such re-letting and

including, but not limited to, attorneys fees, advertising fees and brokerage fees, and to the payment of any repairs, renovations, remodeling, redecoration, alterations and changes in the Premises; third, to the payment of Rent due and to become due hereunder, and, if after applying said rents there is any deficiency in the Rent to be paid by Tenant under this Lease, Tenant shall pay any deficiency to Landlord monthly on the dates specified herein and any payment made or suits brought to collect the amount of the deficiency for any month shall not prejudice in any way the right of Landlord to collect the deficiency for any subsequent month. The failure or refusal of Landlord to re-let the Premises or any part or parts thereof shall not release or affect Tenant's liability hereunder, nor shall Landlord be liable for failure to re-let, or in the event of re-letting, for failure to collect the rent thereof, and in no event shall Tenant be entitled to receive any excess of net rents collected over sums payable by Tenant to Landlord hereunder. No such re-entry or taking possession of the Premises shall be construed as an election on Landlord's part to terminate this Lease unless Landlord gives Tenant, written notice of such intention. Notwithstanding any such re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach and default. Should Landlord at any time terminate this Lease by reason of any default, in addition to any other remedy it may have, it may recover from Tenant the amount of Rent reserved in this Lease for the balance of the Lease term, as it may have been extended, over the then fair market rental value of the Premises for the same period, plus all court costs and attorneys' fees incurred by Landlord in the collection of the same.

f. Waiver of Redemption Rights. Tenant, for itself, and on behalf of any and all persons claiming through or under it, including creditors of all kinds, waives and surrenders all right and privilege which they or any of them might have under or by reason of any present or future law, to

redeem the Premises or to have a continuance of this Lease for the term hereof, as it may have been extended, after having been dispossessed or ejected therefrom by process of law or under the terms of this Lease or after the termination of this Lease as herein provided.

17. MORTGAGE SUBORDINATION AND ATTORNMENT: This Lease shall be subordinate to any mortgage or deed of trust now existing or hereafter placed upon the Land, the Building or the Premises created by or at the instance of Landlord, and to any and all advances to be made thereunder, and to interest thereon and all modifications, renewals and replacements or extension thereof. ("Landlord's Mortgage"); provided, however, that the holder of any Landlord's Mortgage or any person or persons purchasing or otherwise acquiring the Land, Building or Premises at any sale or other proceeding under any Landlord's Mortgage shall agree to continue this Lease in full force and effect so long as Tenant is not in default under this Lease; and, in such event, Tenant shall attorn to such person or persons. Tenant shall properly execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may require to effectuate the provisions of this Section. Tenant shall attorn to the purchaser upon any foreclosure under a mortgage or deed of trust secured by the Premises, Building, or Land and shall recognize such purchaser as Landlord under this Lease.

18. REMOVAL OF PROPERTY:

a. Movable Property. Landlord's fixed assets are listed on attached Exhibit C. Tenant shall remove all its movable property and trade fixtures which can be removed without damage to the. Premises prior to the Lease expiration date or sooner termination of this Lease and shall pay Landlord any damages for injury to the Premises or Building resulting from such removal.

b. Immovable Property. In addition to Landlord's fixed assets listed on Exhibit C, all other property in the

Premises and any alterations or additions thereto (including, without limitation, wall-to-wall carpeting, paneling, wall covering, window dressings, coverings or shades, or lighting fixtures and apparatus), whether provided by Landlord or Tenant, and any other article affixed to the floor, wall or ceiling of the Premises shall become the property of Landlord and shall remain upon and be surrendered with the Premises, Tenant hereby waiving all rights to any payment or compensation therefor. If, however, Landlord so requests in writing, Tenant shall, prior to expiration or sooner termination of this Lease, remove such alterations, additions, fixtures, equipment and property placed or installed by it in the Premises as requested by Landlord and will immediately repair any damage, caused by or resulting from such removal, returning the Premises to the condition prevailing at the date the Premises were originally delivered to View-Master under the Original Lease, or as thereafter improved, reasonable use, wear and tear excepted.

c. Failure to Remove Property. If Tenant shall fail to remove any of its property of any nature whatsoever from the Premises at the termination of this Lease or when Landlord has the right of reentry, Landlord may, at its option, remove and store said property without liability for loss thereof or damage thereto, such storage to be for the account and at the expense of Tenant. If Tenant shall not pay the cost of storing any such property after it has been stored for a period of 30 days or more, Landlord may, at its option, sell, or permit to be sold, any or all of such property at public or private sale (and Landlord may become purchaser at such sale), in such manner and at such times and places as Landlord in its sole discretion may deem proper, upon five (5) days notice to Tenant (which notice Landlord and Tenant agree is commercially reasonable), and shall apply the proceeds of such sale; first, to the cost and expense of such sale, including reasonable attorneys' fees actually incurred; second, to the payment of the costs or charges for storing any such property;

third, to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and fourth, the balance, if any, to Tenant.

19 NON-WAIVER: Waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of the same or any other term, covenant or condition. The subsequent acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease, other than the failure of Tenant to pay the particular amount so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount.

20. SURRENDER OF POSSESSION: Subject to the terms of Section 11 relating to damage and destruction, upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises, together with all keys thereto, to Landlord in as good condition as when received by View-Master from Landlord under the Original Lease or as thereafter improved, reasonable use, wear and tear excepted.

21. HOLDOVER: If Tenant shall, without the written consent of Landlord, hold over after the expiration or termination of the term of this Lease, such tenancy shall be deemed to be a month-to-month tenancy, which tenancy may be terminated as provided by law. During such tenancy, Tenant agrees to pay to Landlord twice the rate of rental last charged under this Lease, unless a different rate shall be agreed upon, and to be bound by all of the other terms, covenants and conditions herein specified, so far as applicable. Landlord may elect to treat Tenant as a holdover tenant subject to the provisions of this Section if Tenant fails

to make repairs or remove furniture, furnishings, or trade fixtures which Tenant is required to remove under this Lease.

22. CONDEMNATION:

a. Entire Taking. If all of the Premises or such portions of the Building as may be absolutely necessary for Tenant's use are taken by eminent domain, this Lease shall automatically terminate as of the date title vests in the condemning authority and Tenant shall pay to Landlord all Rents and other payments to that date.

b. Constructive Taking of Entire Premises. In the event of a taking of a material part but less than all of the Building, where Landlord shall reasonably determine that the remaining portions of the Building cannot be economically and effectively used by Tenant (whether on account of physical, economic, or other reasons), Landlord shall forward a written notice to Tenant of such determination not more than sixty (60) days after the date of such taking. The term of this Lease shall expire upon the date Landlord specifies in such notice but hot earlier than sixty (60) days after the date of such notice.

c. Partial Taking. In case of taking of a part of the Premises, or a portion of the Building not absolutely necessary for Tenant's use of the Premises, then this Lease shall continue in full force and effect and the Rent shall be equitably reduced based on the proportion by which the floor area of the Building is reduced, such reduction in Rent to be effective as of the date title to such portion vests in the condemning authority.

d. Awards and Damages. Landlord reserves all rights to compensation for damage to the Premises in any partial, constructive, or entire taking by eminent domain, and Tenant hereby assigns to Landlord any right Tenant may have to such compensation or award, and neither Tenant nor anyone acting on behalf of or through Tenant shall make a claim against

Landlord or the condemning authority for compensation for termination of the leasehold interest or interference with Tenant's business. Notwithstanding the foregoing, Tenant may make a claim, separate from Landlord's, for interruption of business, moving expenses or the taking of any of Tenant's trade fixtures and any proceeds of such claim shall belong to the Tenant.

23. NOTICES: All notices under this Lease shall be in writing and delivered in person or sent by registered or certified mail to Landlord and Tenant at the Notice Addresses set forth in Section 1(f) and to the holder of each and every mortgage or deed of trust on the Building at such place as such holder or Landlord may specify to Tenant in writing, or such other addresses as may from time to time be designated by such parties in writing. Notices shall be deemed effective 72 hours after such mailing.

24. COSTS AND ATTORNEYS' FEES: If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments due hereunder or possession of the Premises, each party, to the extent permitted by law, waives, trial by jury and the losing party shall pay the prevailing party a reasonable sum for attorneys' fees, costs and expenses in such suit, at trial and on appeal, and such attorneys' fees, costs and expenses shall be deemed to have accrued on the commencement of such action.

25. LANDLORD'S LIABILITY: Notwithstanding anything in this Lease to the contrary, the covenants, undertakings and agreements herein made by Landlord are made and intended not as personal covenants, undertakings and agreements or for the purpose of binding Landlord personally the assets of Landlord except to the extent of Landlord's interest in the Premises but are made and intended for the

purpose of only the Landlord's interest in the Premises as the same may from time to time be encumbered. No personal liability or personal responsibility is assumed nor shall at any time be asserted or enforceable against, Landlord or its partners or their respective heirs, legal representatives, successors. And assigns on account of this Lease or on account of any covenant undertaking or agreement of Landlord in this Lease.

26. LANDLORD'S CONSENT: Whenever Landlord's consent is required under the terms hereof, such consent may not be unreasonably withheld.

27. ESTOPPEL CERTIFICATES: Tenant shall, from time to time, upon written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement stating or certifying if true: The date this Lease was executed and the date it expires; the date the term commenced and the date Tenant accepted the Premises; the amount of monthly Rent and the date to which such Rent has been paid; that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date and terms of any agreement so affecting this Lease); that this Lease represents the entire agreement between the parties as to this leasing; that all conditions under this Lease to be performed by the Landlord have been satisfied, including, but without limitation, all co-tenancy requirements, if any; that on this date there are no existing claims; defenses or offsets which the Tenant has against the enforcement of this Lease by the Landlord; that no Rent has been paid more than one month in advance; and the amount of any security that has been deposited with Landlord. It is intended that any such statement delivered pursuant, to this paragraph may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Building or Premises. If Tenant shall fail to respond within ten (10) days of re-

ceiving Landlord's written request for such written statement, Tenant shall be deemed to have given the written certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser, assignee, or mortgagee, including but not limited to information stating that this Lease is in full force and effect, that there are 'no uncured defaults in Landlord's performance, that the security deposit is as stated in the Lease, and that not more than one month's Rent has been paid in advance.

28. TRANSFER OF LANDLORD'S INTEREST: This Lease shall be assignable by Landlord without the Consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises or in the Building, other than a transfer for security purposes only, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer and Tenant agrees to attorn to the transferee.

29. RIGHT TO PERFORM: If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after notice thereof by Landlord. Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any of its obligations, make any such payment or perform any such other act. Landlord, in addition to any other right or remedy of Landlord provided by law, shall have the same rights and remedies in the event of the nonpayment of sums due under this Section as in the case of default by Tenant in the payment of Rent.

30. CORPORATE AUTHORITY: Each individual executing this. Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with a duly adopted resolution of the Board of Directors of Tenant and in

accordance with the bylaws of Tenant, and that this Lease is binding upon Tenant in accordance with its terms. Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of a resolution of the Board of Directors of Tenant authorizing or ratifying the execution of this Lease.

31. Drainage. The Premises and Landlord's adjoining property are both served by a drainage systems which consists of open grates and underground sewers and catch basins. Tenant shall maintain in good condition and repair the portion of such system on the Premises and shall be responsible to Landlord pursuant to the indemnity provisions in Section 13 for any materials Tenant discharges into such drainage system.

32. Sanitary Sewers. The Premises and Landlord's adjoining property are both served by one unified sanitary sewer system. Tenant shall be responsible for maintaining in good condition and repair the portion of such system located on the Premises and shall be responsible to Landlord pursuant to the indemnity provisions in Section 13 for any materials Tenant discharges into such drainage system.

33. GENERAL:

a. Headings. The section titles are not part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

b. Heirs and Assigns. All of the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and tenant and their respective, heirs, executors, administrators, successors and assigns.

c. No Brokers. Tenant represents and warrants to Landlord that it has not engaged any broker, finder or other person who would be entitled to any commission or fees in respect of the negotiation, execution, or delivery of this Lease

and shall indemnify and hold harmless Landlord against any loss, cost, liability or expense incurred by Landlord as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant. The provisions of this subparagraph shall not apply to brokers with whom Landlord has an express written brokerage agreement.

d. Entire Agreement. This Lease contains all of the covenants and agreements between Landlord and Tenant relating in any manner to the rental, use and occupancy of the Premises and Tenant's use of the Building and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect, except the indemnity provisions of the Original Lease as specified herein, and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

e. Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

f. Force Majeure. Time periods for Landlord's performance under any provisions of this Lease shall be extended for periods of time during which the Landlord's performance is prevented due to circumstances beyond the Landlord's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.

g. Exhibits. The following exhibits are made a part of this Lease:

Exhibit A - Legal description of the Land
Exhibit B - drawing outlining the Premises
Exhibit C - Landlord's Fixed Assets

h. Warranty of Title and Quiet Enjoyment. Landlord warrants that it is the current owner of the Property and has the right to execute this Lease. Landlord further covenants and warrants that at all times during the term hereof, provided Tenant is not in default, Tenant will have full.*

IN WITNESS WHEREOF this Lease has been executed the date and year first above written.

LANDLORD:	**TENANT:**
CASCADE SQUARE ASSOCIATES, a Washington partnership	VIEW-MASTER IDEAL GROUP INC., a Delaware corporation
By /s/ [Illegible] Its General Partner	By /s/ [Illegible] Its Vice President
	Guarantor:
	TYCO TOYS, INC., a Delaware corporation
	By /s/ [Illegible] Its Executive Vice President

Guaranty of Performance. The performance by View-Master Ideal Group, Inc. of each and every covenant and obligation under the foregoing Lease and any assignments, additions, amendments, deletions or extensions thereof, is hereby guaranteed by Tyco Toys, Inc. and its successors and assigns (the "Guarantor"). The obligation of the Guarantor is a primary and unconditional obligation and shall be enforceable either before or after proceeding against View-Master Ideal Group, Inc. Guarantor hereby waives notice of acceptance hereof and the non-performance by View-Master Ideal Group, Inc. of any of its covenants or obligations hereunder.

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* peaceful and quiet enjoyment of the Premises for the purposes and uses set forth in this Lease.

This Agreement shall inure to the benefit of the Landlord and its successors and assigns.

Guarantor hereby waives all defenses arising by reason of any disability or other defense of View-Master Ideal Group, Inc. or Guarantor, including all defenses, if any, arising from the filing of a petition in bankruptcy by or against View-Master Ideal Group, Inc. or by reason of the cessation of liability of View-Master Ideal Group, Inc. from any cause other than the full and complete performance of the terms of this Lease.

GUARANTOR:

TYCO TOYS, INC.,
a Delaware corporation

By /s/ [Illegible]
Its Executive Vice President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that John G. Eyler is the person who appeared before me and said person acknowledged that [he] signed this instrument, on oath stated that [he] was authorized to execute the instrument and acknowledged it as the General Partner of CASCADE SQUARE ASSOCIATES, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: March 5, 1991

(Seal or stamp)

/s/ [Illegible]
Notary Public in and for the State
of Washington residing at [Illegible]
My appointment expires: 8/25/91

STATE OF NEW JERSEY)
) ss.
COUNTY OF BURLINGTON)

I certify that I know or have satisfactory evidence that Harry J. Pearce is the person who appeared before me and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the Executive Vice President of TYCO TOYS, INC., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: March 1, 1991.

(Seal or stamp)

/s/ Ivonne Dyson
Notary Public of New Jersey
My appointment expires: Dec. 7, 1992

STATE OF NEW JERSEY)
) ss.
COUNTY OF BURLINGTON)

I certify that I know or have satisfactory evidence that R. MICHAEL KENNEDY, JR. is the person who appeared before me and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the Vice President of VIEW-MASTER IDEAL GROUP, INC., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: March 1, 1991.

(Seal or stamp)

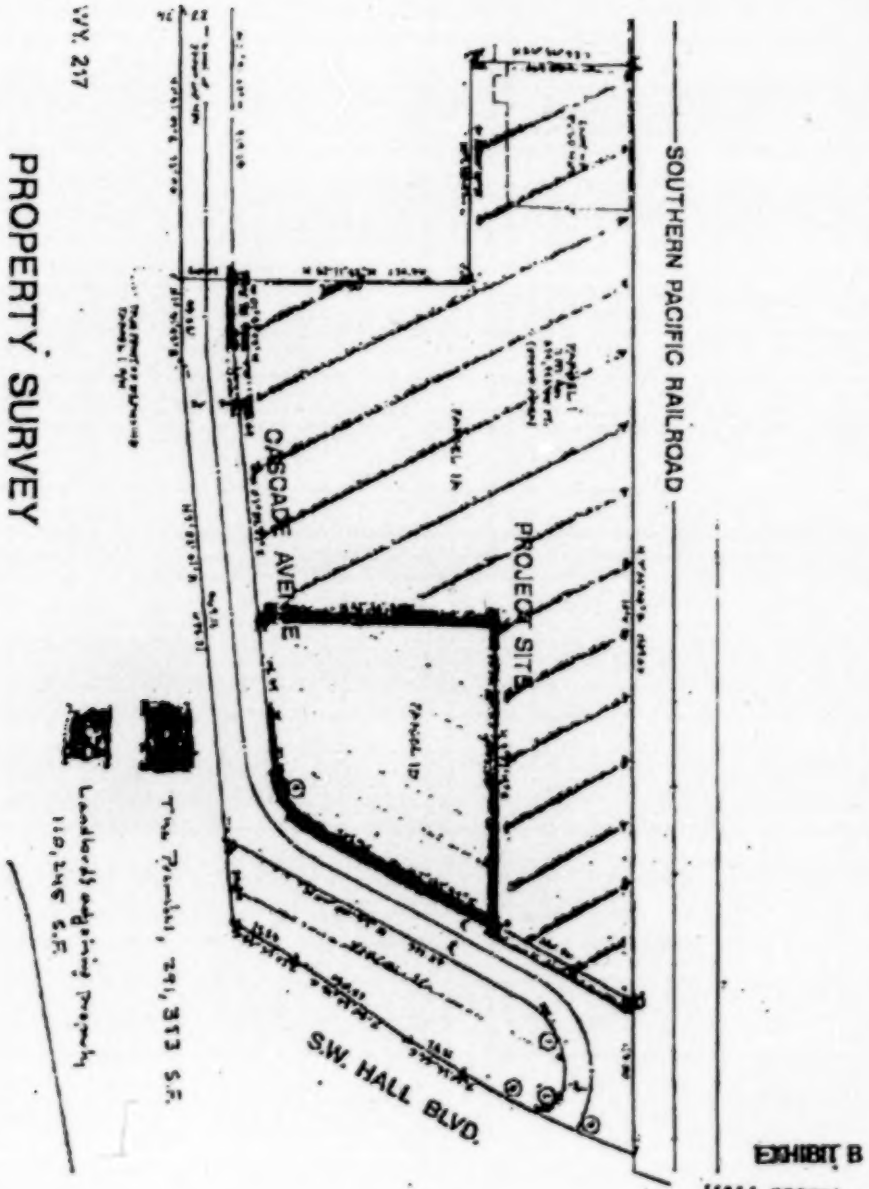
/s/ Ivonne Dyson
Notary Public of New Jersey
My appointment expires: Dec. 7, 1992

Parcel IA

A tract of land situated in the Northeast one-quarter of Section 27, Township 1 South. Range 1 West of the Willamette Meridian in the City of Beaverton, Washington County, Oregon, more particularly described follows:

COMMENCING at the East one-quarter corner of Section 27 said point being marked by a Washington County brass cap monument; thence North 01°51'43" East along the East line of Section 27, a distance of 327.94 feet; thence North 87°11'42" West, 60.01 feet to the true point of beginning of the tract herein to be described; thence North 87°11'42" West 274.55 feet; thence South 02°50'10" West 267.36 feet; thence North 06°56'53" West, a distance of 189.59 feet to a point on the East line of Southern Pacific Railroad right-of-way thence North 03°04'48" East along said East line 1096.66 feet; thence South 60°00'59" East, 180.46 feet; thence South 03°07'12" West, 352.05 feet; thence South 87°24'37" East, 267.67 feet; thence South 03°02'47" East, 306.49 feet; thence South 01°51'43" West, 91.76 feet to the point of beginning.

BEST AVAILABLE COPY



FR 227

LANDLORD'S FIXED ASSETS

Exhibit C Hall 00059

462 3 01677 Assembly Area Lighting
01712 Marley Aquatower
01743 Marley Aquatower #4421
01744 Marley Aquatower #4421
01750 Lighting-New Molding Area
01813 Marley Aquatower #4421
01814 200 Amp Service
01840 Marley Aquatower & Paco Unit PE Pump
01855 Cooling Tower
02267 Exhaust Blower
02455 Air Conditioner
02481 Reclaim Building
02623 Compressor-Ingersol Rand-60 HP
02624 Gas Service w/Pressure Regulator
02632 Feeder Lines To New Panels, 1, 2, 3, 4
02633 Transformer-1000 KVA w/Switchgear
02634 Ventilating Equip Systems 1-4
02635 Switch Gear-Elec.
02636 Connect Main Sanitary Sewer (Labor)
02637 Underground Electrical Service
02638 Electrical Distribution Sys Phase I
02639 Electrical Distrib. Sys. Phase II & III
02640 Install Bull Run Water
02644 G.E. Circuit Breaker; Watt Hour Meter
02645 500 KVA Transformer
02646 Switch Gear
02650 Transformer-Dry Type-100 KVA
02651 Indoor Air Circuit
02652 Building for Emergency Generator
02653 Auto Synchronizer-Elec.
02654 Auto Synchronizer-Elec.
02655 Motor Control Center Riser
02656 Crest Meter-3" S. R. Gal.

02657 Transformer-Westinghouse-3 Phase
02659 G.E. Transformer-Type D, 100 KVA
02660 Switch Gear-Metal Clad Indoor
02661 G.E. Dry Type Transformer
02663 G.E. Dry Type Transformer
02664 G.E. Dry Type Transformer
02665 G.E. Dry-Type Transformer
02666 G.E. Dry Type Transformer
02668 Control Center for Cafeteria Bldg.
02963 Solaconstant Voltage Transformer
03118 Switch Gear & Elec Panels Bldg 800
03130 Elec Switch Panel-277/480 Volt
03243 Lighting
462 3 03248 Aquatower-Morley Model 4421
03249 Signaling System
03314 2000 KVA Electric Power Substation
03334 Marley #14421 Aquatower
03335 Marley #4421 Aquatower
03372 Lighting
03426 30 KVA Transformer and Accessories
03547 Air Conditioner (30,000 BTU)
03630 Air Conditioner
03631 Air Conditioner
03632 Air Conditioners
03963 Burner Conversion
03974 Replace Bottom Section- #1 Boiler
03976 New Submersible G P Industrial Pump
04003 No 2 Boiler-Replace Bottom Section 1
04034 Emergency Lighting Systems w/Battery
04051 G.E. 1000 KVA Transformer
64052 Sorgel Stepdown Transformer 120-208
04053 Sargel Stepdown Transformer 120-208
04054 Sorgel Stepdown Transformer 120-208
04081 All Steam Heat Exchangers
04082 AOT Controls
04084 Air Collector Tanks

[Arbitration Trial Exhibit 103, filed in Docket No. 130, Hall Street Associates, L.L.C. v. Mattel, Inc. et al, United States District Court for the District of Oregon, Case No. 00-355-JO]

FIRST AMENDMENT TO LEASE
Between
CASCADE SQUARE ASSOCIATES
and
VIEW-MASTER IDEAL GROUP, INC.

This First Amendment to Lease (the "First-Amendment") dated this 29th day of April, 1996 amends that certain lease agreement dated March 5, 1991 between Cascade Square Associates, a Washington partnership ("Landlord"), and View-Master Ideal Group, Inc., an Oregon corporation f/k/a View-Master International Group, Inc. for certain real property and buildings and other improvements commonly known as 8585 Southwest Hall Boulevard, Beaverton, Oregon, as outlined on the drawing attached as Exhibit "A" (the "Premises").

WHEREAS, View-Master Ideal Group, Inc. has assigned its interest under the Lease to Tyco Manufacturing Corp., an Oregon corporation ("Tenant");

WHEREAS, the Lease has a lease expiration date of May 31, 1997; and

WHEREAS, the parties deem it in their mutual best interests to extend the term of the Lease through April 30, 2003.

NOW, THEREFORE, in Consideration of the above recitals, the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties do hereby agree to amend the Lease as follows:

1. **Paragraph 1.c. of the Lease shall be amended to read as follows:**

   "c. Lease Expiration Date. The Lease expiration is April 30, 2003."

2. **Paragraph 1.d. shall be amended and expanded to include the following:**

   Delete the fifth line which reads:

   "February 1, 1996 - May 31, 1997 $82,672.92"

   and insert the following:

   "February 1, 1996 - April 30, 2003 $82,672.92"

The following shall be added to paragraph 1.d.:

"CPI Escalations. The above monthly rental rate effective February 1, 1996 of $82,672.92 shall be increased on May 1, 1998 to take into account the increase in the CPI from May 1, 1997 through April 30, 1998. The monthly rent of $82,672.92 shall be multiplied by a fraction, the numerator of which is the CPI most recently published prior to May 1, 1998 and the denominator of which is the CPI most recently published prior to April 30, 1997. The resulting rent (the "Initial Increased Rent") shall be the monthly rent commencing May 1, 1998 through April 30, 1999.

On May 1, 1999 and on each successive May 1 for the remaining term of the Lease (each, the "Escalation Date") the Rent shall be increased annually to take into account the increase in the CPI from April 30 of the previous year to the Escalation Date. To accomplish this the Rent then being paid shall be multiplied by a fraction, the numerator of which is the CPI most recently published prior to the Escalation Date and the denominator of which is the CPI most recently published prior to May 1 of the previous year. The resulting amount

shall be the Rent to be paid through April 30 of the following year.

The "CPI" as utilized above shall be defined as the revised Consumer Price Index for All Urban Consumers All Items (Portland-Vancouver Area) (1982-84=100) as published by the United States Department of Labor. Should such index cease to be published, then the Landlord shall choose an index which, in the reasonable exercise of Landlord's discretion, is similar to the CPI, which index shall be substituted for the CPI.

In no event will any CPI adjustment result in a decrease in the monthly rental rate that is being paid at the time of said adjustment."

3. Section 10 of the Lease is hereby deleted in its entirety and replaced with the following:

"10. LANDLORD'S LIEN: Landlord agrees that any statutory or common law landlord's lien to which Landlord might otherwise be entitled shall not extend to Tenant's inventory located on the Premises, and Landlord and Tenant agree that Landlord shall grant to any party (the "Secured Party") reasonable access to the Premises to remove the same to the extent that such Secured Party certifies in writing to Landlord (i) that the Secured Party has a security interest in the inventory of Tenant and is entitled to do so pursuant to its agreement with Tenant; (ii) that the Secured Party does indemnify, defend and hold harmless the Landlord from any and all liability caused by or resulting from the actions of the Secured Party or the Secured Party's agents in exercising any rights with respect to the inventory and/or entering onto the Premises (other than due to the gross negligence or willful misconduct of the Landlord); and (iii) that the Secured Party and/or its agent shall not damage the Premises in any manner or fashion in exercising their

rights to remove the inventory and agrees to immediately reimburse the Landlord for the Landlord's reasonable estimated cost of repair for any damages to the Premises incurred as the result of their entry thereon. Landlord may rely on the certification without inquiry and shall have no liability to any party as a result of such reliance.

Access to any third party hereunder is to be without any charge or fee and for not more than four months from the earlier of (i) the date such party delivers such writing to Landlord or (ii) the date Landlord gives Tenant (and any party which has notified Landlord that it is a Secured Party) a written notice of default under this Lease, which default has not been cured. This Section 10 is for the benefit of all parties which have a security interest in inventory of Tenant and each such party is a third party beneficiary of this Section. Landlord acknowledges that General Electric Capital Corporation, as Agent, is a Secured Party for the purposes of such notice. No amendment, modification or supplement of this Section 10 shall be valid without the prior written consent of each secured party, whom Landlord is advised by Tenant has a security interest in Tenant's inventory."

4. New paragraph 34 shall be added is follows:

"34. COMPLETION OF CERTAIN OBLIGATIONS PRIOR TO TERMINATION. Any all obligations of Tenant under paragraph 8. Repair and Maintenance and paragraph 12 Hazardous Building Materials and Waste shall be performed and completed in their entirety to the satisfaction of Landlord not later than nine (9) months prior to the Least Expiration Date."

The Lease, other than as amended as set forth above, shall continue to be in full force and effect, and all of the terms and conditions in it shall remain effective and enforceable by and between the parties relative to the entire Premises.

Tyco Manufacturing Corp. is a wholly owned subsidiary of Tyco Toys, Inc., a Delaware corporation ("Guarantor"). Guarantor was the guarantor of View-Master Ideal Group, Inc.'s performance under the Lease. Guarantor by signing below hereby acknowledges that the amendment to this Lease is beneficial to it and hereby guarantees the performance of the Lease as amended.

LANDLORD:

CASCADE SQUARE ASSOCIATES,
a Washington partnership
By VIOLETT PROPERTIES, a Washington partnership, its General Partner

By /s/ Josef Diamond
Its Josef Diamond, Partner

TENANT:

TYCO MANUFACTURING CORP., an Oregon corporation

By /s/ R. Michael Kennedy, Jr.
Its Senior Vice President and Secretary

GUARANTOR:

TYCO TOYS, INC.,
a Delaware corporation

By /s/ Harry J. Pearce
Its Vice Chairman

Guaranty of Performance. The performance by Tyco Manufacturing Corp. of each and every covenant and obligation under the foregoing Lease and any assign-ments, additions, amendments, deletions of extensions thereof, is hereby guaranteed by Tyco Toys, Inc. and its successors and assigns (the "Guarantor"). Should Tyco Manufacturing Corp. reject this Lease and/or the performance thereof whether through its action or inaction in bankruptcy or otherwise, then Guarantor shall become the Tenant under the terms of the Lease and shall fulfill all of the duties of Tenant which have not then been fulfilled by Tyco Manufacturing Corp. The obligation of the Guarantor is a primary and unconditional obligation and shall be enforceable either before or after proceeding against Tyco Manufacturing Corp. Guarantor hereby waives notice of acceptance hereof and the non-performance by Tyco Manufacturing Corp. of any of its

covenants or obligations hereunder. This Agreement shall inure to the benefit of the Landlord and its successors and assigns.

Guarantor hereby waives all defenses arising by reason of any disability or other defense of View-Master Ideal Group, Inc. or Guarantor, including all defenses, if any, arising from the filing of a petition in bankruptcy by or against Tyco Manufacturing Corp. or by reason of the cessation of liability of View-Master Ideal Group, Inc. from any cause other than the full and complete performance of the terms of this Lease.

GUARANTOR:

TYCO TOYS, INC., a
Delaware corporation

By /s/ Harry J. Pearce
Its Vice Chairman

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Josef Diamond is the person who appeared before me and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the [Illegible] of CASCADE SQUARE ASSOCIATES, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: May 6, 1996.

[Seal or stamp]

/s/ Judy Ann Mounton
JUDY ANN MOULTON
Notary Public in and for the State of
Washington residing at Seattle, WA.
My appointment expires: 1/5/99

STATE OF NEW JERSEY)
) ss:
COUNTY OF BURLINGTON)

I certify that I know or have satisfactory evidence that Harry J. Pearce is the person who appeared before me and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the Vice Chairman of TYCO TOYS, INC., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: April 29, 1996

[Seal or stamp]

/s/ Therese C. Cronin
THERESE C. CRONIN
Notary Public in and for the State of New Jersey residing at Oaklyn, NJ
My appointment expires: 9/26/98

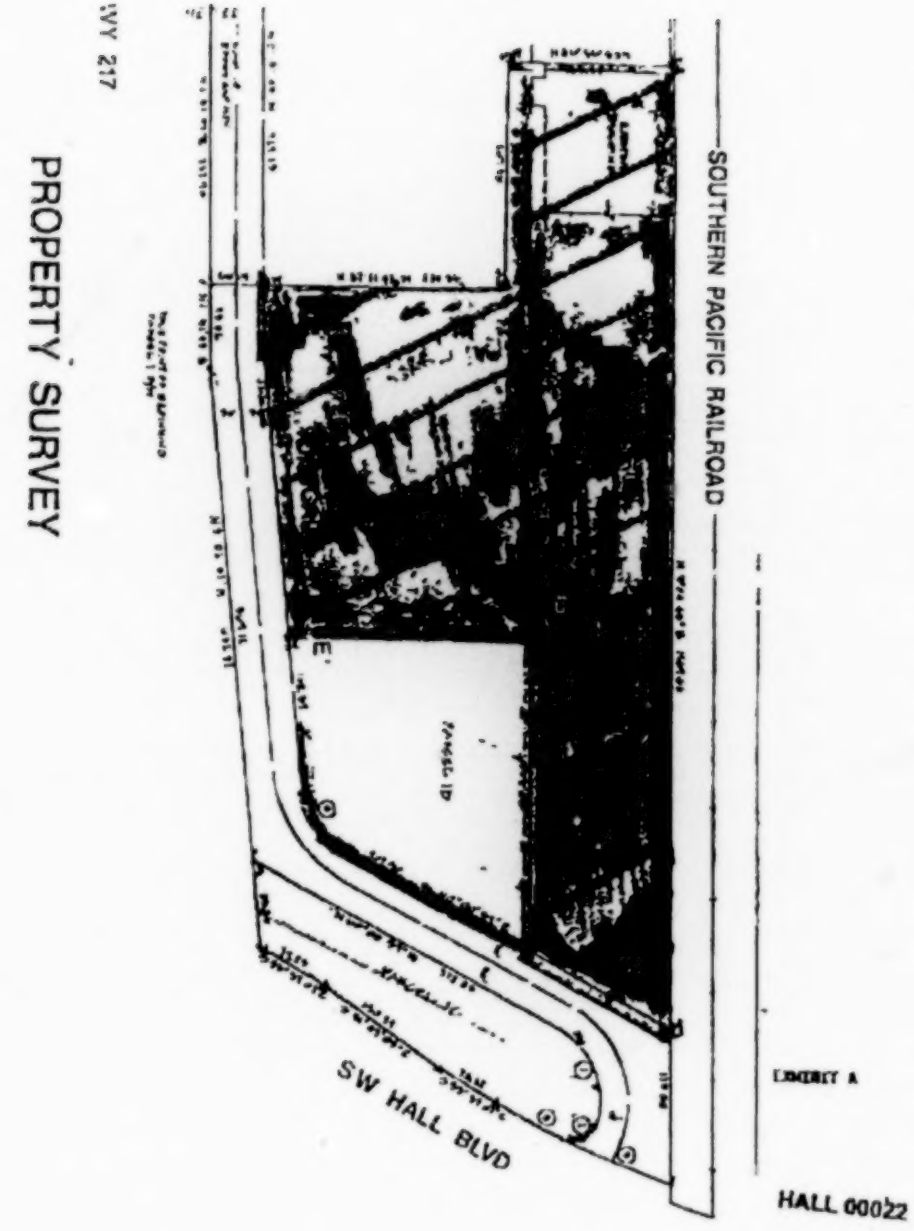
STATE OF NEW JERSEY)
) ss:
COUNTY OF BURLINGTON)

I certify that I know or have satisfactory evidence that R. Michael Kennedy, Jr. is the person who appeared before me and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the Sr. Vice President and Sect. of TYCO TOYS, INC., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: April 29, 1996.

[Seal or stamp]

/s/ Therese C. Cronin
THERESE C. CRONIN
Notary Public in and for the State of New Jersey residing at Oaklyn, NJ
My appointment expires: 9/26/98



PROPERTY SURVEY

HWY 217

EXHIBIT A

HALL 00022

ER 236

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; TYCO INDUSTRIES, INC., a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; and VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

DEPOSITION OF ROBERT HIBBS
Taken in behalf of the Defendants
January 31, 2001

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[20] was made for all documents relative to this lease.

Q. Expanding the time period, then, to any time you had discussions with Mr. Diamond about the 1991 lease and the 1997 lease amendment.

A. Yes.

Q. And can you tell me what was said?

MR. FINN: That—I'm instructing the witness not to answer that question because Mr. Hibbs was acting as attorney for Hall Street and Cascade Square Associates, and those conversations are privileged.

(INSTRUCTION-BY-COUNSEL)

MR. HSIAO: And since Mr. Hibbs was a principal of Hall Street and at times acting as counsel, Mattel finds that the

assertion of privilege is improper and wishes to object to both its assertion and the proffering of Mr. Hibbs's testimony in light of that objection, and will rely upon this objection on the record to preserve all of its rights and remedies pursuant to this objection.

With that, let's go ahead and continue.

* * * *

[54] A. I know that I've read it after he signed it.

Q. Do you know if you read it before he signed it?

A. Undoubtedly did, yes.

Q. How many times?

A. I don't know.

Q. But you believe you did at least once--

A: Yes.

Q. —all the way through—

A. Yes.

Q. —before he signed it?

Did you understand each of the terms in this lease before Mr. Eyler signed it?

A. Yes.

Q. And do you recall communicating to him anything about that?

MR. FINN: That's—I'm sorry. That's privileged. I'll instruct the witness not to answer.

(INSTRUCTION-BY-COUNSEL)

MR. HSIAO: And just so I understand any question that I ask this witness about his communications regarding this lease to Mr. Eyler; [55] or to Mr. Diamond, you will instruct the witness not to answer based upon the attorney-client, work-product privilege; is that correct?

MR. FINN: Correct.

BY MR. HSIAO: (Continuing)

Q. And just so I have this on the record, you refuse to answer, based on your counsel's advice, correct?

A. That is correct.

Q. That would be true each time your counsel asserts the privilege objection, that you will not answer, based on your counsel's advice?

A. That is correct.

MR. HSIAO: All right.

(Discussion off the record.)

MR. HSIAO: I assume it works in reverse; it's any communication regardless of who initiates it. So any communication from Mr. Diamond or Mr. Eyler to Mr. Hibbs, you will also instruct your client not to answer?

MR. FINN: That's right.

BY MR. HSIAO: (Continuing)

Q. Let's look, then, at page 26, Paragraph 33d.

* * * *

[58] Tenant."

Q. So for that sentence, would your testimony be the same; you don't recall whether you drafted this or not?

A. That is correct.

Q. And you don't recall whether you reviewed this section or not prior to the entry of the lease—

A. Correct.

Q. —between Mr. Eyler—

A. That is correct.

Q. Did you provide advice to Mr. Eyler regarding this section?

MR. FINN: That's privileged.

(INSTRUCTION-BY-COUNSEL)

BY MR. HSIAO: (Continuing)

Q. Did you have any discussions with Mr. Eyler regarding this section?

MR. FINN: That's privileged

(INSTRUCTION-BY-COUNSEL)

BY MR. HSIAO: (Continuing)

Q. And so based upon your counsel's instruction, are you refusing to answer my questions?

A. Those questions.

[59] Q. Yes. Thank you.

The answer is yes, you're refusing to answer the question?

A. Those questions.

Q. Yes. Thank you.

Do you recall what your understanding was of these sentences prior to Mr. Eyler signing the lease agreement?

A. No, I do not.

Q. And today, can you tell me what this sentence means to you?

A. It means that the lease may be modified only by writing—by a written document signed by both parties.

Q. Is it fair to say that by signing this lease, Mr. Eyler agreed that the terms of the lease would apply, as you've just stated, both to the landlord and the tenant?

MR. FINN: I'm sorry. Read that back, please.

(Reporter read as follows:

"Question: Is it fair to say that by signing this lease, Mr. Eyler agreed that the terms of the lease would apply, as

* * * *

[91] A. Correct.

Q. What did you tell them about Section 3?

A. I don't recall.

Q. What did they tell you about Section 3?

A. I don't recall.

Q. So in 1991 you don't recall what you told them or what they told you about Section 3?

A. That is correct.

Q. And that would be for all of Section 3?

A. Yes.

Q. Other than what you've testified to, is there any other discussion that you remember about Section 3, in 1991, prior to the signing of the lease?

MR. FINN: Sorry?

THE WITNESS: I've discussed it with my clients, also. That's where I'm going.

MR. FINN: Okay. Thanks.

BY MR. HSIAO: (Continuing)

Q. What did you say to your clients about Section 3?

[92] MR. FINN: That's privileged.

MR. HSIAO: Please, for the witness—instruct your witness.

MR. FINN: I thought we already set up a rule that we didn't have to keep doing this every time.

MR. HSIAO: All right. So—I'm sorry. I—in fact, we did. You have a blanket instruction to your client not to reveal conversations he had with other members of Cascade Square about the '91 lease and the '96 lease.

MR. FINN: That's correct.

MR. HSIAO: And for each of those questions, you will instruct your witness not to answer?

MR. FINN: Right.

BY MR. HSIAO: (Continuing)

Q. Other than conversations that you had with your clients and what you've testified to previously in the deposition, did you have any other communications in 1991, before the lease was signed, about Paragraph 3?

A. Not that I recall.

(Discussion off the record.)

[93] BY MR. HSIAO: (Continuing)

Q. Other than the principals of Cascade, did Cascade have any other employees?

A. No.

Q. Did they have any other members, associates, or participants?

A. I take that back. We did have an employee.

Q. Who was that?

A. Dan Mundel (ph).

Q. What was his function?

A. He was the manager of the Cascade Square office building.

MR. HSIAO: And, Jim, I assume any communications that the deponent would have had with this employee, you will similarly instruct him not to answer.

MR. FINN: That's correct.

MR. HSIAO: Again, based on the attorney-client privilege?

MR. FINN: Right.

BY MR.HSIAO: (Continuing)

Q. All right. So again, just trying make sure I've covered the universe of—

MR. FINN: Hang on one second.

* * * *

[98] was, was also that of Cascade Square's, correct?

A. That is correct, in this instance.

Q. And that would be true even if Mr. Eyler and Mr. Diamond did not have that understanding?

A. The only way that I would obtain their understanding is through discussions with my clients, which are subject to the privilege.

Q. And which you will not discuss, correct?

A. I'm instructed not to discuss, yes.

Q. And the questions of which you will refuse to answer, correct?

A. On instruction from counsel, yes.

Q. All right. Then the last paragraph which—the last sentence which is there appears to be in a—

(Discussion off the record.)

MR. HSIAO: I'm sorry. I think we have a standing instruction in place. Mr. Finn has given a standing instruction to Mr. Hibbs that any question that involves communication between the—any member of Cascade or Hall Street and Mr. Hibbs is privileged and will not [99] be disclosed.

(Discussion off the record.)

MR. HSIAO: Oh, I'm sorry. That's a fair question.

BY MR. HSIAO: (Continuing)

Q. How—how has Cascade communicated to Mr. Finn that the privilege should be asserted in this way?

MR. FINN: I don't understand.

MR. HSIAO: Are you asserting the privilege on your own, or are you asserting it on instruction from Cascade or for—

MR. FINN: What difference does it make? I never thought about that issue, so I don't know how to answer it, nor do I think I'm required to.

BY MR. HSIAO: (Continuing)

Q. Okay Back to the document. The last sentence appears to be—

MR. BLACKMAN: Hold on, though. Mr. Hibbs is here as a principal of Hall Street, not as its counsel.

MR. HSIAO: Well, let's clarify.

BY MR. HSIAO: (Continuing)

Q. Are you testifying as a principal of [100] Hall Street and not as its counsel?

A. No.

MR. FINN: I don't know how he can bifurcate himself. He is what he is. And it doesn't make any difference, for purposes of whether or not questions are privileged, in my view.

MR. HSIAO: So –but he is testifying today as a principal of Hall Street or as its counsel or both?

MR. FINN: I don't—I don't know the answer to that question. I don't really know what difference it makes. I don't know what point you're trying to make.

When I said he is what he is, he acted as lawyer and he was a principal, so—and some of his answers will necessarily be related to the work he did as a lawyer, some of which are privileged and some of which aren't, which he's already talked about. So he's doing it from both points of view, I think.

MR. BLACKMAN: Counsel, let me say, based on what we've heard so far today and without the documents we'll be requesting, it's my understanding that Mr. Hibbs is the managing

* * * *

[136] this section would change that you just testified to, was that your understanding as the lawyer for Cascade Square or was it your understanding as the principal of Cascade Square?

A. Both.

(Discussion off the record.)

BY MR. HSIAO: (Continuing)

Q. As the principal of Cascade Square, did you communicate that understanding to any of your partners?

MR. FINN: Objection; subject to the instruction.

(INSTRUCTION-BY-COUNSEL)

MR. HSIAO: I'm sorry. For my record, please instruct your witness not to answer based on the privilege.

MR. FINN: That's the instruction.

BY MR. HSIAO: (Continuing)

Q. And do you refuse to answer the question based on the instruction?

A. I do.

MR. FINN: Let me explain, so the record is clear. I don't think it's possible for this witness to distinguish between [137] conversations he had as an attorney about the first amendment and conversations he had as a principal about the first amendment.

If that's not true, if you have an ability to segregate those two things, then say so, but I'm assuming that you can't do that.

THE WITNESS: That is correct.

MR. BLACKMAN: And, Counsel, I think, so the record is clear, I will stick my two cents in here and say that I believe if he can't distinguish, there is no privilege; not the reverse.

BY MR. HSIAO: (Continuing)

Q. Did you communicate your understanding, regardless of whether you did it internally, did you communicate that understanding external to anyone at View-Master, your interpretation of Section 3?

A. I conveyed to View-Master and View-Master conveyed to me the understanding of the parties; that the term of the lease, the time during which the tenant would pay rent and would and perform those other obligations, would extend through—without the ability to terminate earlier, would. extend through the

* * * *

CASE NAME: Hall Street vs. Mattel, et al.
DEPONENT: Robert Hibbs

PAGE	LINE	REASON	CORRECTION

I hereby certify that I have read the deposition taken January 31, 2001, and that this deposition, together with any corrections or additions, is a true and accurate record of my testimony:

/s/ [Illegible]
Witness' signature

Subscribed and sworn to before me this 6th day of March, 2001.

Notary Public for the State of Washington
My commission expires: 3-27-01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; TYCO INDUSTRIES, INC., a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; and VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

DEPOSITION OF JOHN EYLER
Taken in behalf of the Defendants
January 31, 2001

[49] very much involved in negotiations at various times, but I can't say specifically this 1991 lease.

Q. Thank you.

And on your side, was Joe Diamond involved in the negotiation of the 1991 lease?

A. Sure that he read it. At least he—he would make his input to Bob, like I did.

Q. Do you recall any communications that you had regarding the negotiation of this 1991 lease marked as Defendants' Exhibit No. 2?

A. I'm not sure I understood that question.

Q. Sure. Do you remember talking with anyone about the 1991 lease before you signed it?

A. Well, I would have talked to Bob Hibbs about it before I signed it.

Q. Do you recall anything about what you said?

MR. FINN: Well, wait a minute. That would be privileged, and so I'm instructing the witness not to answer, regarding his conversation with Mr. Hibbs.

(INSTRUCTION-BY-COUNSEL)

[50] MR. HSIAO: And just so I understand what the deponent can and cannot testify to, the discussions that he had with Bob Hibbs as partners of Cascade Square Associates are privileged?

MR. FINN: Well, the way I put it is the discussions that Mr. Eyler had with Bob Hibbs are privileged because Mr. Hibbs was acting as the attorney for Cascade Square Associates in regard to the negotiation of leases and that sort of thing.

MR. HSIAO: Okay. I understand.

(Discussion off the record.)

BY MR. HSIAO: (Continuing)

Q. Just to clarify, in the time of the negotiation of the 1991 list—lease, Bob Hibbs was your partner at Cascade Square Associates, correct?

A. Yes.

Q. And he was also providing you with legal advice about the 1991 lease, correct?

A. Yes.

Q. And so the—

MR. HSIAO: Again, it you'll assert the privilege for me, just so I have it clear—[51] the communication between Mr. Eyler and Mr. Hibbs about the negotiation of the 1991 lease, you're going to assert the privilege and instruct the witness not to answer?

MR. FINN: Correct.

(Discussion off the record.)

BY MR. HSIAO: (Continuing)

Q. And Mr. Diamond was your partner at that time, as well?

A. Yes.

Q. Was Mr. Diamond providing you with legal advice regarding the negotiation of the 1991 lease?

A. Providing me?

Q. Correct.

A. I didn't have many conversations with him at all, so—as I said, his input on legal would go to Bob.

Q. Do you recall any conversations that you had with Joe Diamond regarding the 1991 lease?

A. I can't remember any right now.

Q. And other than conversations, are there documents or other communication—written communications that you would have

* * * *

CASE NAME: Hall Street vs. Mattel, et al.
DEPONENT: John Eyler

PAGE	LINE	REASON	REASON
4	23	Wrong Number	(425) 861-9026
29	11	Error In Transcription	. . . For My "Employer."
31	23	Error In Transcription	. . . If "You Hadn't" . . .

I hereby certify that I have read the deposition taken January 31, 2001, and that this deposition, together with any corrections or additions, is a true and accurate record of my testimony:

/s/ [Illegible]
Witness' signature

Subscribed and sworn to before me this 12th day of March, 2001.

Notary Public for the State of Washington
My commission expires: 7-19-04

[Arbitration Trial Exhibit 164, filed in Docket No. 130, Hall Street Associates, L.L.C. v. Mattel, Inc. et al, United States District Court for the District of Oregon, Case No. 00-355-JO]

[LOGO]

INTERNAL COMMUNICATIONS Date: February 8, 1991

To: ARNOLD THALER; HARRY PEARCE

From: MICHAEL KENNEDY

Subject: EYLER LEASE - BEAVERTON

We had several exchanges with Landlord's counsel on Thursday, resulting in some progress which I have summarized below.

1. "Predecessors-in-Interest" language.

   While not adopting our proposed language changes, he suggested new language effectively limiting our liability to damages actually caused by the conduct of VMIG.

   The result is that no damages for PCB's asbestos, hazardous waste or "other damage" caused exclusively by predecessors-in-interest would be our responsibility.

2. "Burden of Defense" language.

   In the case of responsibility shared by various parties, our share will be "a fair and reasonable allocation" of defense costs based on our actual contribution to damages.

   The allocation will be attempted first by agreement, second by arbitration, and third (if necessary) by judicial determination; it is intended to be accomplished within two (2) months if not agreed to.

The above represents, in our view, a reasonable disposition of the two points which have held up signing of the renewal Lease Agreement.

(Note: If Landlord decides to demolish the building, our responsibility will be limited to what it would have been if the building had remained in use.)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed NOV 16, 2004]

No. 03-35525
D.C. No. CV-00-00355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited liability company,
Plaintiff- Appellee,

v.

MATTEL INC., a Delaware corporation,
Defendant - Appellant,

and,

TYCO INDUSTRIES, INC, a Delaware corporation; et al.,
Defendants.

No. 03-35526
D.C. No. CV-00-00355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited liability company,
Plaintiff - Appellant,

v.

MATTEL INC., a Delaware corporation,
Defendant - Appellee,

and,

TYCO INDUSTRIES, INC, a Delaware corporation; et al.,
Defendants.

Appeal from the United States District Court
for the District of Oregon
Robert E. Jones, District Judge, Presiding

Argued and Submitted November 3, 2004
Portland, Oregon

MEMORANDUM*

Before: TROTT and KLEINFELD, Circuit Judges, and POLLAK,** District Judge.

Our en banc decision in Kyocera Corp. v. Prudential-Bache Trade Services., Inc.[1] controls this case. Under *Kyocera* the terms of the arbitration agreement controlling the mode of judicial review are unenforceable and severable.[2] The evidence that the parties intended that the entire arbitration agreement should fail in the event that the expanded standard of review provision failed is not strong enough to distinguish this case from Kyocera.

Kyocera compels us to vacate the district court's judgment based on the arbitration agreement and remand to the district court.[3] On remand the district court shall return to the

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Louis H. Pollak, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

[1] *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987 (9th Cir. 2003) (en banc).

[2] *Kyocera*, 341 F.3d at 1000-02.

[3] *Id.* at 994 ("The Federal Arbitration. Act, 9 U.S.C. §§ 1-16, enumerates limited grounds on which a federal court may vacate, modify, or correct an arbitral award. Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award under the statute, which is unambiguous in this regard. Because the

application to confirm the original arbitration award (not the subsequent award revised after reversal), and shall confirm that award, unless the district court determines that the award should be vacated on the grounds allowable under 9 U.S.C. § 10, or modified or corrected under the grounds allowable under 9 U.S.C. § 11.[4]

Because we vacate the judgment based on the arbitration agreement we need not reach the attorneys' fees issue.

We affirm the district court's separate finding that Mattel was within its rights in terminating the lease. Although the lease termination provision suggests a possible scrivener's error when the lease was amended, no mistake is claimed nor reformation sought, and the parol evidence rule requires that this integrated agreement be enforced as written without consideration of extrinsic evidence.[5]

The parties shall bear their own costs on appeal.

AFFIRMED in part, REVERSED in part, and REMANDED.

Constitution reserves to Congress the power to determine the standards by which federal courts render decisions, and because Congress has specified the exclusive standard by which federal courts may review an arbitrator's decision, we hold that private parties may not contractually impose their own standard on the courts.").

[4] Id. at 997-98.

[5] See Indus. Indem. Co. v. Aetna Cas. & Sur. Co., 465 F.2d 934, 937 (9th Cir. 1972).

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

No. CV 00-355-JO

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited Liability Company,
Plaintiff,

v.

MATTEL, INC., a Delaware corporation; TYCO INDUSTRIES, INC., a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; and VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

DECLARATION OF PETER HSIAO AND EXHIBITS SUBMITTED IN OPPOSITION TO PLAINTIFF'S MOTION FOR ORDER AND JUDGMENT AWARDING SUPPLEMENTAL ATTORNEYS' FEES, COSTS, AND EXPENSES

I, Peter Hsiao, declare and state as follows:

1. I am a partner at Morrison & Foerster LLP, and am one of the attorneys primarily responsible for representing defendant Mattel, Inc. ("Mattel") in the action captioned *Hall Street Associates, L.L.C. v. Mattel, Inc., et al.* As Mattel's attorney, I am familiar with the pleadings and documents in this case. I have personal knowledge of the matters set forth in this declaration, and, if called upon, could competently testify thereto.

2. Exhibit A attached hereto is a true and correct copy of excerpts from the transcript of trial proceedings before the Honorable Robert E. Jones, United States District Court Judge, on April 27, 2001, in the action captioned *Hall Street Associates, L.L.C. v. Mattel, Inc., et al.*

3. Exhibit B attached hereto is an original certified copy of the Statutory Special Warranty Deed, dated September 27, 2004, transferring property in Beaverton, Oregon from Hall Street Associates, LLC, to NSHE Cascade, LLC. Mattel requests that the Court take judicial notice of this document pursuant to Federal Rules of Evidence 201 and 902.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 22, 2005, in Los Angeles, California.

/s/ Peter Hsiao
PETER HSIAO

AFTER RECORDING RETURN TO:	UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO:
After Recording Return To: Ticor Title Insurance 1000 SW Broadway, Ste 1555 Portland OR 97205	Harsch Investment Properties, LLC 1121 S.W. Salmon Street, Sixth Floor Portland, OR 97205 Attention: Tax Department

STATUTORY SPECIAL WARRANTY DEED

HALL STREET ASSOCIATES, LLC, a Washington limited liability company, Grantor, conveys and specially warrants to NSHE CASCADE, LLC, an Oregon limited liability company, Grantee, the following described real property (the "Property") free of encumbrances created or suffered by Grantor except as specifically set forth herein:

See Exhibit "A" attached hereto which is incorporated herein by this reference.

The true consideration for this conveyance is Five Million Four Hundred Thousand and No/100 Dollars ($5,400,000.00). The consideration is paid by an accommodation party pursuant to an exchange of properties under Section 1031 of the Internal Revenue Code.

The Property is free of encumbrances created or suffered by Grantor except as specifically set forth on Exhibit "B" attached hereto.

The Property shall be further subject to the following restrictions:

1. The former water supply well located on the Property needs to be retained in the event future testing is necessary as part of a possible health study for former plant workers;

2. Future changes to the Property that would interfere with the operation and/or maintenance of the groundwater remediation system located at the Property will require notification to the Oregon Department of Environmental Quality (the "DEQ") by the owner of the Property and DEQ approval of any physical changes to the remediation equipment installed at the Property; and

3. The owner of the Property should consult with DEQ concerning the consolidation of contaminated soils beneath building(s) or paved parking areas to ensure such activities will not exacerbate existing conditions at the Property.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 27th day of September, 2004,

Grantor: **HALL STREET ASSOCIATES, LLC,**
a Washington limited liability company

By: **JOSEF DIAMOND INVESTMENTS LLC,**
a Washington limited liability company
Its: Managing Member

By: /s/: Josef Diamond, Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that JOSEF DIAMOND is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of JOSEF DIAMOND INVESTMENTS, LLC, a Washington limited liability company, the Managing Member of HALL STREET ASSOCIATES, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 9/27/04

/s/: Darby L. Savery
Notary Public in and for the State of Washington,
Residing at Covington.
My appointment expires: 11/15/07

EXHIBIT A
TO DEED

(Real Property Description)

A tract of land situated in the Northeast one-quarter of Section 27, Township I South; Range 1 West of the Willamette Meridian, in the City of Beaverton, County of Washington and State of Oregon, more particularly described as follows:

Commencing at the East one-quarter corner of Section 27, said point being marked by a Washington County brass cap monument; thence North 01° 51' 43" East along the East line of Section 27, a distance of 327.94 feet; thence North 87° 00'42" West 60.01 feet to the true point of beginning of the tract herein to be described; thence North 87° 11' 42" West 274.55 feet; thence South 02° 50'10" West 267.36 feet; thence North 86° 56' 53" West a distance of 189.59 feet to a point on the East line of Southern Pacific Railroad right-of-way; thence North 03° 04' 48" East along said East line, 1096.66 feet; thence South 60° 00' 59" East 180.46 feet; thence South 03° 07' 12" West 352.05 feet; thence South 87° 24' 37" East 267.67 feet; thence South 03° 02' 47" East 306.49 feet; thence South 01° 51' 43" West 91.76 feet to the point of beginning.

TOGETHER WITH an easement for vehicular and pedestrian ingress and egress and for utility installation, set forth in that certain Reciprocal Easement Agreement recorded March 6, 1996 as Fee No. 96019861, more particularly described as follows:

EASEMENT NO. 1: Beginning at the Easterly one-quarter corner of said Section 27, said point being on the Easterly boundary line of said Burlington Cascade Plaza property; thence South 00° 00' 00" West along said section line and the Easterly boundary line of said Burlington Cascade Plaza property a distance of 445.00 feet to an angle point in said

boundary line; thence South 40° 30' 49" West along said boundary line a distance of 92.36 feet to a point that is 60.00 feet Westerly of when measured at right angles to the Easterly line of said Section 27; thence North 00° 00' 00" East; parallel with and 60.00 feet Westerly of said Easterly section line a distance of 515.53 feet; thence North 00° 36' 33" East parallel with and 60.00 feet Westerly of said Easterly section line a distance of 329.28 feet to a point on the Northerly boundary line of said Burlington Cascade Plaza property; thence South 88° 27' 10" East along said Northerly boundary line a distance of 60.01 feet to a point on the Easterly line of said Section 27; thence South 00° 36' 33" West along said Easterly boundary line a distance of 327.98 feet to the true point of beginning.

EASEMENT NO. 2: Beginning at the Northeasterly corner of said Burlington Cascade Plaza property, said point being North 00° 36' 33" East along the Easterly line of said Section 27, a distance of 327.98 feet from the East one-quarter corner of said Section 27; thence North 88° 27' 10' West along the Northerly line of said Burlington Cascade Plaza property a distance of 60.01 feet to a point that is 60.00 feet Westerly of when measured at right angles to the Easterly line of said Section 27, said point being the true point of beginning of the easement herein described; thence South 00° 36' 33" West parallel with and 60.00 feet Westerly of the Easterly line of said Section 27, a distance of 10.00 feet to a point that is 10.00 feet Southerly of when measured at right angles to the Northerly line of said Burlington Cascade Plaza property; thence North 88° 27' 10" West parallel with and 10.00 feet Southerly of said Northerly boundary line a distance of 267.69 feet to a point that is 7.00 feet Easterly of when measured at right angles to a North South line in said boundary line; thence South 01° 34' 22" West parallel with and 7.00 feet Easterly of said boundary line a distance of 257.26 feet; thence North 88° 25' 38" West a distance of 7.00 feet to an angle point in said Burlington Cascade Plaza

boundary line; thence North 01° 34' 22" East along said boundary line a distance of 267.26 feet to an angle point in said boundary line; thence South 88° 27' 10" East along said boundary line a distance of 274.52 feet to the true point of beginning.

ALSO TOGETHER WITH reciprocal easement rights contained in a Joint Declaration recorded September 1, 1983 as Document No. 83-032264, and re-recorded December 14, 1983 as Document No. 83-046081, and amended by Document recorded March 4, 1993 as Document No. 93-016612, and amended by Document recorded September 6, 1995 as Document No. 95-062984 and also recorded in Document recorded September 12, 1995 as Document No. 95-064672.

AND ALSO TOGETHER. WITH rights contained in a Party Wall Agreement recorded October 6, 1983 as Document No. 83-037028 and recorded December 29, 1983 as Document No. 83-048042.

AND ALSO TOGETHER WITH rights contained in a Real Estate License Agreement recorded March 4, 1993 as Document No. 93-016601.

EXHIBIT B TO DEED

(Permitted Exceptions)

1. The lien of non-delinquent general real estate taxes and assessments, if any, not yet due and payable.

2. Joint Declaration of Reciprocal Easements and Restrictions, including the terms and provisions thereof,

By:	Western International Properties, a joint venture composed of I.L.C., Inc., a Washington corporation and James B. Neuman and L.P.A.W.C., a joint venture composed of Fisher-Downs Partnership and Venture Financial Enterprises, Inc.
Dated:	August 31, 1983
Recorded Date:	September 1, 1983
Recording Number:	83032264,
Re-recorded Date:	December 14, 1983
Recording Number:	83046081
Amended by Document	
Recorded Date:	March 4, 1993
Recording Number:	93016612
Amended by Document	
Recorded Date:	September 6, 1995
Recording Number:	95062984
And also recorded in Document	
Recorded Date:	September 12, 1995
Recording Number:	95064672

3. Party Wall Agreement, including the terms and provisions thereof,

Between:	Western International Properties, a joint venture composed of I.L.C., Inc., a Washington corporation and James B. Neuman

And:	L.P.A.W.C., a joint venture composed of Fisher-Downs Partnership and Venture Financial Enterprises, Inc.
Recorded Date:	October 6, 1983
Recording Number:	83037028 and
Recorded Date:	December 29, 1983
Recording Number:	83048042

4. Easement, including the terms and provisions thereof,

From:	Cascade Square Associates
To:	General Telephone Company of the Northwest, Inc.; a corporation
Recorded Date:	March 21, 1985
Recording Number:	85009853
For:	Communications lines
Affects:	Exact location cannot be determined

5. Easement, including the terms and provisions thereof,

From:	Cascade Square Associates
To:	City of Beaverton, a municipal corporation
Recorded Date:	August 2, 1985
Recording Number:	85029658

6. Real Estate License Agreement, including the terms and provisions thereof,

Between:	Pacific First Bank, a federal savings bank
And:	Cascade Square Associates, a Washington general partnership
Dated:	March 4, 1993
Recorded Date:	March 4, 1993
Recording Number:	93016611
Affects:	Allows for improvements on the herein described parcel to encroach onto an adjacent parcel

7. Easement, including the terms and provisions thereof,

From:	Ads Investment Limited Partnership, an Oregon limited partnership fka Burlington Cascade Plaza Limited Partnership
To:	Cascade Square Associates aka Cascade Square Association, a Washington general partnership
Recorded Date:	March 6, 1996
Recording Number:	96019861

8. Stipulation and Consent Decrees as contained in Washington County Circuit Court Case No. C030225CV, entitled State of Oregon, by and through its Department of Environmental Quality, Plaintiff and Hall Street Associates, L.L.C., et al, Respondents, including the terms and provisions thereof,

Recorded Date:	March 11, 2003
Recording Number:	2003035835 and
Recorded Date:	March 11, 2003
Recording Number:	2003036059 and
Recorded Date:	March 20, 2003
Recording Number:	2003042090 and
Recorded Date:	April 18, 2003
Recording Number:	2003060678

9. Matters disclosed on the ALTA/ACSM Land Survey prepared by kpff Consulting Engineers dated April 9, 2004, Job No. 303182, as follows:
   a) The existing building shown as having 143,501 square feet extends beyond the 10 foot building setback line in two areas:
      1) along the most Northerly East property line
      2) along the Southerly property line.

b) The existing building shown as having 21,530 square feet extends beyond the 10 foot building setback line along the most Easterly North property line.

c) The following items extend beyond the West property line:

1) Four roll up doors with loading docks; two of which are shown to include steel ladders
2) Three air vents
3) A two inch air pipe
4) A one inch pipe at the SW corner of the property
5) Four rain drains
6) A Corrugated metal shed
7) A six inch storm water drain line outfall.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed AUG 1, 2006]

No. 05-35721
D.C. No. CV-00-00355-REJ

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited liability company,
Plaintiff - Appellee,

v.

MATTEL INC., a Delaware corporation,
Defendant - Appellant,

and

TYCO INDUSTRIES, INC, a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

No. 05-35906
D.C. No. CV-00-00355-REJ

HALL STREET ASSOCIATES, L.L.C.,
a Washington Limited liability company,
Plaintiff - Appellee,

v.

MATTEL INC., a Delaware corporation,
Defendant - Appellant,

and

TYCO INDUSTRIES, INC, a Delaware corporation; TYCO MANUFACTURING CORP., an Oregon corporation; TYCO TOYS, INC., a Delaware corporation; VIEW-MASTER IDEAL GROUP, INC., an Oregon corporation,
Defendants.

Appeal from the United States District Court
for the District of Oregon
Robert E. Jones, District Judge, Presiding

Argued and Submitted July 25, 2006
Portland, Oregon

MEMORANDUM*

Before: GOODWIN, REINHARDT, and GRABER, Circuit Judges.

This appeal of the district court's refusal to enforce an arbitration award is before us for the second time. *See Hall St. Assoc., LLC v. Mattel, Inc.*, 113 Fed. Appx. 272 (9th Cir. 2004). Initially, we reversed the district court for using an improper standard of review and provided instructions to enforce the arbitration award unless grounds for not doing so existed under either 9 U.S.C. §§ 10 or 11. *Id.* at 272. On remand, the district court again failed to enforce the arbitration award, this time because it was "implausible." Implausibility is not a valid ground for avoiding an arbitration award under either 9 U.S.C. §§ 10 or 11.

Although the arbitrator's assessment of the merits in this case contains possible errors of law, those errors are not a sufficient basis for a federal court to overrule an arbitration award. *See Employers Ins. of Wausau v. Nat'l Union Fire Ins.*

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Co. of Pittsburgh, 933 F.2d 1481, 1486 (9th Cir. 1991) ("We may not predicate reversal on . . . erroneous findings of fact or conclusions of law."); *see also Hawaii Teamsters and Allied Workers Union, Local 996 v. United Parcel Serv.*, 241 F.3d 1177, 1181 (9th Cir. 2001) ("Our task is, in essence, to review the procedural soundness of the arbitral decision, not its substantive merit."). Furthermore, it cannot be said that the arbitrator's decision in this case is "completely irrational." *See Kyocera Corp. v. Prudential-Bache Trade Servs. Inc.*, 341 F.3d 987, 997 (9th Cir. 2003) (en banc) (construing 9 U.S.C. § 10(a)(4), the only subsection of either 9 U.S.C. §§ 10 or 11 that could conceivably apply to the arbitration award in this case). Thus, we remand the case to the district court with instructions to enforce the original arbitration award and declare Mattel the prevailing party. The district court's award of attorneys' fees in favor of Hall Street is also reversed and the district court should determine the attorneys' fees and costs due to Mattel under the arbitration agreement.

REVERSED AND REMANDED

Hall Street Associates, L.L.C. v. Mattel, Inc., Nos. 05-35721, 05-35906 GRABER, Circuit Judge, dissenting:

I respectfully dissent because, although the majority correctly identifies the governing legal principles, I conclude that the arbitrator's decision was completely irrational.

Paragraph 12(a) of the Lease provides, as relevant here, that "Tenant shall comply with all federal, state and local environmental laws and regulations in its use of the Premises." Paragraph 12(c) of the Lease provides that the tenant shall not be held liable for certain items "[t]o the extent Tenant has been in compliance with applicable environmental laws." In context, the only rational reading of the phrase "applicable environmental laws" in Paragraph 12(c) is as shorthand for "all federal, state and local environmental laws and regulations in [Tenant's] use of the Premises," the

longhand description just given in Paragraph 12(a). That is, any environmental law with which the tenant was required to comply in its use of the premises was "applicable" within the meaning of Paragraph 12 as a whole. Paragraph 12(b) confirms the necessity of interpreting "applicable" in this way because it provides that the tenant "assumes all responsibility for the investigation and cleanup" of any hazardous waste on the premises and that the tenant is liable for, and must indemnify the landlord for, all costs resulting directly or indirectly from the "presence" of any hazardous waste on the premises.

This understanding of Paragraph 12 arises not only from the words and structure of the Lease, but also from the arbitrator's own findings as to the parties' intent. The arbitrator found that Mattel agreed to a comprehensive indemnification of Hall Street, irrespective of the time of the occurrence that resulted in the presence of hazardous wastes on the premises.

It is undisputed that the statute in question here is an "environmental law." The arbitrator's conclusion that the statute was not "applicable" is completely irrational in view of (a) the clear meaning of Paragraph 12 and (b) the undisputed facts that Mattel failed to test the water supply for eighteen years even though the statute required it to have done so, resulting in Mattel's signing of a consent order with the state's Department of Environmental Quality.

Accordingly, I would either affirm the decision of the district court (albeit on different grounds) or remand the case for reconsideration under the appropriate legal standard.